United States Court of Appeals

for the Second Circuit

APPENDIX

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75-1004

United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 75-1004

UNITED STATES OF AMERICA,
Appellee,

v.

ANTHONY M. NATELLI, and
JOSEPH SCANSAROLI,
Defendants-Appellants.

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VOLUME II
Trial Testimony, Pages 1 to 706

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
-against-	:	74 Cr. 43
ANTHONY M. NATELLI and JOSEPH SCANSAROLI,	:	
Defendants.	:	

New York, New York.
October 21, 1974 - 10:00 A.M.
Room 619

Before:

HONORABLE HAROLD R. TYLER, District Judge

and a jury:

APPEARANCES:

PAUL J. CURRAN, United States Attorney for the
Southern District of New York.
By: FRANKLIN B. VELIE, and
JED RAKOFF, Assistant United States Attorneys.

MARTIN, OBERMAIER & MORVILLO, ESQS.,
Attorneys for Defendant Natelli
By: JOHN S. MARTIN, ESQ., of Counsel.

MORRISON, PAUL, STILLMAN & BEILEY, ESQS.,
Attorneys for Defendant Scansaroli
By: CHARLES STILLMAN, ESQ.,
and
EDWARD D. TANENHAUS, ESQ., of Counsel.

(In the robing room.)

THE COURT: Preliminarily, gentlemen, a problem has arisen because Judge Bonsal of this Court is ill and will not be available for perhaps a week or much longer, for all I know.

Yesterday I went over and talked to him at his request because he, as of Friday afternoon. finished the testimony in a narcotics case, so that all that remains to be done, in effect, is for counsel to sum up and for the Judge to charge the jury and get a verdict.

I am elected to be the substitute Judge.

Now, as you know, under the statutes or the rules, the Judge who substitutes under such circumstances is obliged to certify that he knows the record, etc., etc., which I am not confident that I can do in the shortness of notice on this affair.

That jury and the lawyers are waiting one floor above and I have arranged to go up and meet them briefly and I am going to have to send them home today, so that I can brush off all of you and the panel of 50 jurors who are waiting to come up in our case.

However, I must warn you that tomorrow morning I will have to go down, rather, go up, I should say, and listen to the summations and instruct this jury. I did

make an effort to see if there was some other Judge available but in the early morning here this morning I had no luck in that regard, and since I am a neighbor and friend,as some of you at least know, of Judge Bonsal, for many years, why, it is probably natural and right that I do it in any event.

Now, I hasten to add this is something that I don't want to alarm anybody about. I think the main thing is that Judge Bonsal hasn't given in to whatever it is that ails him, and it may be very simple and easily taken care of, but he has been trying to fight it without medical consultation for at least a month, to my knowledge, and now at least they have him flat on his back in bed, where he probably ought to stay for a while.

Since I know that some of you know him very well, I don't want to be guilty of alarming you or anybody else. I don't think it is that bad. But he will be away for at least a week and probably longer, depending on what the physicians come up with.

So if you will bear with me, I will go up and consort with the jury in this great case and instruct them to come back tomorrow. What I thought we could do is pick our jury today, after we dispose of one motion which I think has to be disposed of before we begin.

Perhaps there is something else -- I don't know -- that has to be disposed of. But we will dispose of whatever we have to dispose of, then hopefully we will pick our jury, and then tomorrow morning I will have to excuse you and the jury so that I can take care of that narcotics case.

MR. VELIE: Did you want us to open today?

THE COURT: I am hopeful. It doesn't seem to me that we should have much difficulty in doing it. Perhaps I am just an optimist. I don't know. But I prefer to remain optimistic.

MR. MARTIN: If we have the time we will do it.

THE COURT: Sure. I apologize for this unexpected interruption,but I am sure all of you understand.

If you will just wait patiently, I will go up and do what I have to do up there and then I will come back. I shouldn't be long.

(Recess.)

(In open court.)

THE CLERK: United States of America versus Anthony M. Natelli and Joseph Scansaroli.

Is the Government ready?

MR. VELIE: The Government is ready, your Honor.

THE CLERK: Defendant Natali is ready, your Honor.

Defendant Scansaroli ready.

THE COURT: Gentlemen, as I understand it, there is another motion for severance here which we really ought to resolve now. Isn't that a fair statement, in your judgment, collectively?

MR. STILLMAN: Yes, your Honor.

THE COURT: Let's hear you briefly. As you know, I have been blessed by quite a few memoranda. Nevertheless, let me hear you briefly as to why we should sever this case further.

MR. STILLMAN: I think the answer to your Honor's question is rather simple. Whether it persuades you, of course, is another story.

The fact of the matter is that we now know that the Government intends to offer a piece of testimony that goes something like conversation purportedly had between Mr. Natelli and this fellow Bernie Kurek, who has pleaded guilty and we believe and we know is going to be the first Government witness.

That conversation, according to what Mr. Kurek says about it, from what we can glean from his grand jury testimony, your Honor, goes something like "people working on this engagement are unhappy about this particular contracts in progress and they are afraid they might lose

their licenses."

That is taking it at its best, as I see it now, your Honor.

Now, in that conversation there is never any identification who it is that we are talking about and the only other person in this courtroom in the course of this trial whom that might refer to will be my client, Joseph Scansaroli, and I move, based on the idea that it would be an inescapable inference that a jury could make, notwithstanding my instructions to the contrary.

Now, the Government's response to my motion, your Honor, had what I would characterize as my frist surprise in the course of this trial or trial preparation, and that is the Government tells us for the first time that it has a witness who is going to testify that Joseph Scansaroli made a statement to that effect, namely, that he was for some unexplained reason concerned about his professional license because of the work that he was doing.

We don't know who this person is. We don't know when it was said. We don't know the circumstances.

THE COURT: Just a moment. You are saying now that the Government has evidence that Mr. Scansaroli said something to this effect?

MR. STILLMAN: So they say, your Honor.

THE COURT: Yes.

MR. STILLMAN: I have nothing more than this statement by Mr. Velie. It seems to me that if we are to properly address it it would be fair for him to tell us what it is we are dealing with so that I don't have to argue this motion in a vacuum.

I would also point out to your Honor that we are going to be faced -- this is somewhat off the point of this motion, but I think it is something we really ought to address ourselves to and that is the fact, your Honor, that in the Government exhibits that we have seen in the course of our preparation it is apparent that there are loads of documents which have absolutely no connection with Mr. Scansaroli.

Now, I suppose Mr. Velie in responding would say something like "But of course I will prove that," but it seems to me, your Honor, that that kind of proof is just out of touch with what I have come to know about this case.

Based on all those reasons I respectfully urge that the Court grant the motion of Joseph SCansaroli and sever his case from Mr. Natelli's.

MR. MARTIN: Your Honor, before you hear from the Government might I say that I join in the motion, particularly in light of the Government's response, since

the Government now intends to offer some statements of Mr. Scansaroli apparently made, they say, to some witness, and I think one of the problems that Mr. Stillman raised is one that will come up not only in the context of the question of severance here, but in some of the documents that will be offered, and I think that rather than present --

THE COURT: I must say I don't understand this document's point.

MR. MARTIN: Very simply, your Honor, I think what I am getting to is apparently, having read some of the papers -- the Government has premarked all of its exhibits.

THE COURT: Right.

MR. MARTIN: In those documents marked as exhibits there are memoranda going between Mr. Kurek and Mr. Randall that did not go to either of these two defendants and which, according to Bernie Kurek's grand jury testimony, these defendants never saw.

I take it from reading Mr.Velie's response to Mr.Stillman's motion he now intends to argue that there was a conspiracy here between these two defendants and at least Kurek and Randall, perhaps others. I think this is a theory which has no support and I think it is important to focus on it, your Honor, because we are dealing here with an indictment that had a conspiracy count which did not

name these two defendants, an indictment which there was a bill of particulars furnished as to who were the conspirators, and these two defendants were not named. These two defendants are charged with committing an act in August. Even if you take the theory that they acted jointly in August, it is hard to go back, in view of the specific allegations here that there was a conspiracy to which they were not a part, and construct a conspiracy in which they are now made a part to introduce certain documents, the documents going back to February 1969, some seven months before the document that was the subject of this indictment was prepared.

I think these are the problems that your Honor is going to be faced with during the trial. I think that the severance part is only one --

THE COURT: We are trying Count 2, correct.

MR. MARTIN: That is correct, your Honor.

THE COURT: All right. Count 2 charges a number of people, including the two defendants on trial and Kurek, with having either made or caused to be made false and misleading statements as to the material facts, etc., thereinafter recited.

So I assume, and I always have assumed, that the Government, in effect, was charging a scheme in Count 2

MR. MARTIN: A scheme, your Honor, charged in August and September of 1969. That is the problem.

THE COURT: I am not concerned at the moment about ruling on every piece of paper which I don't even know about.

MR. MARTIN: I understand that, your Honor. I don't ask you to rule on that.

THE COURT: I know you don't.

MR. MARTIN: I just want to alert you to the problem so we don't get hit with it throwing it at you at the side bar during the trial.

THE COURT: I don't thinkwe even have to have a side bar. If you are going to object to the offer of evidence I presume I will understand. If I don't it will be my duty to tell you so. Obviously you are not arguing the evidentiary rulings.

What I am trying to say is as I understand Count 2, by its bare bone outlines, I would think in effect this is a scheme or at least a tacit agreement between these gentlemen to do this.

Now, it is true this isn't Count 1, and it is also true, as you suggest, this doesn't make every document admissible over all the period of time that might have been covered by activities of other parties not here on trial.

What I am trying to get at is this sounds to me more like an evidentiary problem than it does a severance problem.

In any case, let's hear from you, Mr.Velie.

MR. VELIE: Your Honor, you are exactly correct. This is an evidentiary problem, and as the indictment itself says, this is a joint crime charged. Under a long series of Second Circuit cases, you don't have to use the magic word "conspiracy" or "conspirators" in order to get the benefit of the agency rule to show that when people act together they are chargeable for having acted together. We have pointed that out in the brief.

We have given a factual outline of exactly how the piece of paper which in fact is challenged here fits closely into that scheme and is in furtherance of it, and we believe there is a proper joinder and we believe that is a proper offer.

You might even want to rule right now that it is properly joined and properly offered.

THE COURT: No, I am not going to rule on the evidence now. It seems to me I don't know that much about it.

But focusing on the severance motion of Mr. Scansaroli, in which Natelli joins, my understanding is that

the real concern here is that you apparently have evidence that Scansaroli said certain things, to the effect that concern people, including perhaps himself, were aware that they might lose their license, etc., etc. Is that right?

MR. VELIE: The essence of that is that Mr. Scansaroli said that he feared losing his license. That is the sum and substance of what Mr. Scansaroli said.

THE COURT: You seek to admit this as against Natelli too?

MR. VELIE: No. That is a simple admission on Mr. Scansaroli's part.

What has been challenged here is another statement made by Mr. Natelli in which Mr. Natelli says, in effect, "The fellows working for me are afraid that they could lose their licenses."

To put this all in context for you, thatstatement was made to Kurek, the Government contends, so that Kurek would pass it along to Randall so that Natelli and Randall could have a pow-wow, which they immediately did, and get their act together. That is exactly what the Government alleges and will prove by this statement. There is no Bruton problem, as you can see. This is during the course of ongoing joint crime.

The reason that Mr. Scansaroli's statement is relevant to this is as a fail safe. Even if -- even if -- Mr. Natelli's statement were made in the grand jury after the crime were over, there is a long line of cases that says if the other fellow says substantially the same thing and they interlock there is no Bruton problem, and that is the only reason we have brought it out.

THE COURT: On reading those grand jury minutes, I certainly don't see any great inconsistency between the testimony of the two men. I must say I agree with you on that.

Without prejudice to the evidentiary points that are lurking in the background here, which the defense may wish to raise separately or jointly, I am going to deny the motion for severance because I don't see any significant Bruton problem nor do I see any other problem which would be created solely by a joint trial of Messrs. Scansaroli and Natelli.

Now, we will have to field the evidentiary problems which are lurking in the background if, as and when they arise, and this would go to testimonial evidence or documentary evidence or both, I would assume, generally speaking.

Now, what else do we have to pass on before we get our panel up?

MR. VELIE: Your Honor, there is a very closely related question to the severance problem and that is the Government has taken precaution under the Glover decision to bring to your attention the fact that we are going to offer two portions of grand jury testimony. We have filed a memorandum. We have given you the testimony.

THE COURT: Right.

MR. VELIE: It is our contention that while there is a colorable Bruton problem lurking here in that each of then mentions the other's name, as you have already pointed out in our discussion thus far, they interlock, and under a string of cases --

THE COURT: They are not inconsistent. That is my reading of the minutes.

MR.VELIE: Yes, your Honor. I believe on that constellation of facts we are entitled to a ruling now so that we don't have all the problems that came up in Mr. Glover's trial and we can proceed and there is no reason to redact this material or do anything other than offer it.

THE COURT: Gentlemen, you want to add your views on that, even though I think I know them from your memoranda?

MR. MARTIN: Your Honor, on that, among other things, that is a ruling which I think is premature at this

point. I would like to reserve my right to address myself to that question until such time as I see what the Government's proof is, so that we can see how significant any differences are.

I do have an objection to it on Bruton grounds, but I would rather reserve my right to state those objections until we see the posture in which that comes in during the trial.

THE COURT: Mr.Stillman?

MR. STILLMAN: I adopt Mr. Martin's statement.

THE COURT: Gentlemen, I think Mr. Velie is correct. At least, the Glover case would seem to suggest that the Government is entwtled to get a ruling before it begins.

To this extent I will rule in the Government's favor, that I don't see in my reading of the minutes which were proffered to me on this motion some days ago, any inconsistency or, to use Mr.Velie's phrase, the testimony of the two men seems to jibe or interlock, to the extent that they mention each other, and so on.

On the other hand, I think this ruling should be made again without prejudice to any other problem that might arise at the trial, and therefore I would say to Messrs. Stillman and Martin that I would quite agree with

you gentlemen to this extent:

There may be some other reason not now known to me or perhaps not even known to you as to why you would like to object to this evidence if and when it is offered.

Certainly I think you are entitled to make that known, if you choose to do so, at that time.

MR. STILLMAN: I assume none of this, your Honor, relates to the later question with respect to instructions to the jury as to how they should use this evidence.

THE COURT: Oh, of course not. We will have to field those problems too when the Court knows more about the flow of the evidence and so on.

End 1A

MR. MARTIN: Your Honor, there was another matter that I had raised by memorandum submitted to you to which Mr. Velie responded.

Again, this may be something that is premature, but again it was something that I wanted to bring to the Court's attention because I knew it would come up. That's the question of Mr. Velie's attempt to amend the bill of particulars and, I submit, to amend the indictment in this case.

That may be relevant at this point only to the extent that Mr. Velie would be intending to go into that theory in his opening. If he does, then I think perhaps we should address ourselves to it at the moment. Otherwise it can wait for a more convenient time. But I do think it is something that the Court should be aware of and I would like to have an opportunity to address the Court.

THE COURT: I am frank to say I don't really understand this problem at all. I know your papers alluded to it, but I will need some help from you. I don't understand how he is even amending really or if he is.

MR. MARTIN: Your Honor, if you will note, count 2 charges in paragraph 4 that there were false statemen contained in the audited nine-month statement in this proxy statement for the nine-month period ending May 31, 1969, and

the indictment says, your Honor, that that statement was false in that net sales were stated at $11,313,000, $13,569, and net earnings of $702,000.

These materials were false and misleading because the defendants well knew at the time the proxy was filed net sales for the period were less than $10,500,000, and NSMC had no earnings at all.

What I am focusing on, your Honor, is when we asked for a bill of particulars, I asked, "Tell me what the sales are that you claim were improper."

The Government responded to that and listed some $800,000 of sales that they said were false and fraudulent. That is 800,000 of a total of $1,900,000 of sales recorded during that period on the basis of unbilled receivables.

The Government has now come and said, "We want to amend that to say all of the unbilled receivables were falsely reported."

Why is that important, your Honor? It is important because I think it changes dramatically what the grand jury charged and I think we are dealing here with the right of people to be tried on the offense found by the grand jury. I think it is significant, your Honor, because it changes completely what the Government has to prove. The grand jury charged that these two men knew these $800,000

were false and fraudulent, these sales. The Government would have to come in with evidence to prove that they knew these specific sales were false and fraudulent. What the Government wants to do is to change this fraudulent case into an accounting case and let them bring in an accountant who will say that this is a type of method of accounting that should not have been used in these circumstances and therefore the Government doesn't have to prove that they knew the specific sales were false and fraudulent.

The grand jury indicted these people not in an accounting case but on a charge that they knew specific sales were false and fraudulent.

THE COURT: The gist of it is that they knew that the net sales for the period were less than stated.

MR. MARTIN: Your Honor, it is a substantial difference to say they knew $800,000 in sales, and that is what the indictment charges, the difference between $11,313,000, and $10,500,000.

THE COURT: Right, exactly.

MR. MARTIN: Your Honor, if this grand jury found in paragraph 3 that it was a crime not to disclose $1,000,000 of write-offs, it seems to me this grand jury would not have said in paragraph 4 -- would not have overstated its finding or understated its finding by over

$1 million, because otherwise that count should have said that net sales were less than 9,300,000.

The grand jury found specific sales, specific fraud. That's the charge the grand jury found and required these defendants to meet and I do not think that the Government can so amend the grand jury's indictment to say that we cannot try what was a fraud case, we are going to try an accounting case.

The grand jury charged nothing these specific sales were false and fraudulent, but we are not going to worry about that, we will try you on a theory that as a matter of accounting you shouldn't have adopted or used this method.

THE COURT: All right. I assume, Mr. Velie, that you will want to open on something. What do you say to all this?

MR. VELIE: With respect to my friend John Martin, I believe he has misconceived what it is that has happened here. The Government, to be sure, that is, I for the Government, prepared a bill of particulars which disclosed certain sales.

However, the starting point for the whole point here is not what I did in the bill of particulars, but rather what the indictment says, and as I believe you have

already pointed out, it says, not as Mr. Martin would read it, that exactly 813,000 of certain designated sales were written off and known to have been written off, it says something quite different. It says that sales were less than a certain amount and that is what the Government proposes to prove.

It also says that NSMC had no earnings at all, and the Government argues and wants to argue and prove that if these accountants knew that over the course of time on which they had been working on these papers that 3.3 million dollars of unbilled accounts receivables had been booked and over 2 million of them had been written off that is the most powerful kind of circumstantial evidence that the ones that are left are phony and it is powerful circumstantial evidence that they knew it was phony, and to simply argue that the Government can't prove these facts and argue these inferences is to adopt the most incredible tiny tunnel vision that one could think of. It renders this indictment not as a charge of crime, but as some kind of small print in an insurance contract, and that is not what the grand jury charged. It charged in large language, sales were less than a certain amount. That is what the Government wants to prove and the Government wants to prove it by all the admissible inferences that they can, including that these guys

knew that enormous writeoffs had taken place and that the rest were uncollectible.

MR. MARTIN: Your Honor, I just want to respond very briefly. Mr. Velie says that I misconceive what the grand jury did. I spent a lot of time in this case in the grand jury stage, which Mr. Velie did not. This bill of particulars was filed some six months after the indictment and there was some knowledge, I would think, by that time as to what the grand jury did, and it is, your Honor, and I just want to emphasize it -- I am not talking about issues of proof here. I am talking about what the grand jury charged.

The defendant in a criminal case has a right to be charged on the charge brought by the grand jury.

The grand jury is not a roving commission for the U. S. attorney to go out and find some crime it wants to --

THE COURT: You have already said that, and I agree with you in principle, but I don't think that is what is involved. I think what is involved here is simply that the Government is still prepared to come in and prove the gist of count 2, particularly in respect to paragraph 4, they are still prepared to come in and prove that the figures contained in the proxy statement were materially false and misleading because, as the defendants knew at the time, net sales for that period were less than ten million,

five, and that NSMC had no earnings at all. This additional information doesn't recede from those points which are made by the grand jury.

Therefore, I do not consider this a material variance and I don't consider that it has misled the defendants, except that apparently the Government is going to have a little bit more proof in particulars than they thought they had at the time the grand jury was passing on this case. But that doesn't undermine the point that I just made, as I see it.

Therefore, the motion is denied and we will go forward on this basis.

MR. MARTIN: Your Honor, I just would want to alert your Honor that this will also involve an evidentiary problem. Again, having seen the Government's evidence, its charts, there is a chart which the Government prepared to use that chose the figures for May 31, 1969 without any unbilled receivables, not without the $800,000 challenge by the grand jury.

THE COURT: I am not concerned nor do I purport to be making any advance evidentiary rulings. All I am saying is that I do not consider this a material variance. Indeed, I think it is nothing like that at all. Therefore, the motion based on United States against Stirone and similar

authorities, I think is not persuasive.

MR. VELIE: Your Honor, there are two other housekeeping matters, if I may, that we should take care of at this time. The first is very brief.

I did file requests on the examination of the jurors. I neglected to point out that Jed Rakoff, Assistant United States Attorney, will be with me from time to time throughout the trial and that a William Reed, who is present today and will not be at the table today, may from time to time be with us, and I would ask the Court to introduce those two in case there is some juror who may know them.

THE COURT: Who is William Reed?

Is he an SEC lawyer?

MR. VELIE: He is an SEC accountant.

THE COURT: He is not going to be a witness, I assume?

MR. VELIE: No, Mr. Reed will not be a witness. That brings up a related point. Mr. Dingwall, who is going to be a witness of a summary nature, will be with me throughout the trial, and I assume, as is customary with summary witnesses, he will also be available to consult with me during the trial. His testimony will only be to summarize documents and introduce charts.

Apart from that, I believe we can all agree on

the witness exclusion rule, is that correct? I so move, in any event.

THE COURT: In other words, you all agree, quite rightly, it seems to me, as a practical matter, all witnesses will be excluded until they testify?

MR. MARTIN: Your Honor, I would ask for one exception to that rule. I don't know if he intends to call him, but Mr. Velie has subpoenaed one Victor Earle, III, the general counsel of Peat, Marwick and Mitchell, your Honor, who I think you know.

THE COURT: Oh, yes.

MR. MARTIN: Mr. Earle obviously has some interest in this case. I doubt that he will be a witness of any substance for the Government. I don't know. In any event, even if he were, I would ask that he be allowed to be present in the courtroom.

MR. VELIE: I would have no objection if I understood he is not going to be a defense witness as well. There seems to me at this point small likelihood that he will be a Government witness, but if he is going to be a defense witness --

MR. MARTIN: There is some likelihood, again small, that he would be a defense witness, but he is a member of the Bar of this Court.

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THE COURT: I will tell you what. It seems to me this doesn't present any great problem, but either side is certainly entitled to observe if, as and when Mr. Victor Earle comes in, and if you feel agrieved at any episode or time that he comes in, why, you will be asked to raise it with me then and we will cope with it at that time.

MR. VELIE: There is one further matter, your Honor, at least one matter I am aware of. The defense, or at least Mr. Martin, has served a subpoena on the Government and also on the marshal service for certain witness vouchers. There is a deputy marshal present. I believe he has the material. I frankly haven't decided whether the Government would move to quash the subpoena, but it seems to me if we had a very brief offer with respect to why this is relevant and material, I could decide.

THE COURT: Look, this is beginning to be a habit. We went through this in a stock fraud case that just ended before me on Friday. I am beginning to think we are like Pavlov's dogs, you know, in our splendid profession. Maybe this is the thing to do in all these cases.

Seriously, do we have to discuss that now? That seems like small beer in the context of the case as a whole.

MR. VELIE: I agree, but if the offer is for a concededly relative purpose of cross examining the witness,

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I obviously --

MR. MARTIN: That is obviously the purpose of it, your Honor.

THE COURT: Cross examining the witness? I don't know what witness you have in mind.

MR. MARTIN: I subpoenaed the records relating to vouchers for somebody who is going to be the first Government witness.

THE COURT: Fine. Can't you make an arrangement with the marshal to just let you borrow those for a day or so whenever this man appears?

MR. MARTIN: Absolutely, your Honor. Mr. Velie said he may object to my having issued the subpoena.

THE COURT: Oh, well. I will take it as an objection and I will overrule it. Look at the documents. If you want to cross examine the witness on that basis, fine.

You are interested in travel and appearance days.

MR. MARTIN: That's right.

THE COURT: And how much money, roughly, he got for travel and time?

MR. VELIE: No objection whatever.

THE COURT: Yes, Mr. Velie. I am afraid this is part of the drill around here in stock fraud cases and other cases. We won't let it worry us.

MR. STILLMAN: It may lead to some helpful evidence, your Honor. That's why we issued the subpoena.

THE COURT: I supported you. I am all for you.

MR. STILLMAN: All right, sir.

THE COURT: We will have the panel come up, gentlemen.

MR. STILLMAN: Your Honor, I do have just one more point. It relates to the proposed voir dire examination submitted by the Government. I don't know whether your Honor just plans to ask our questions and then theirs or whatever, but I would like to respectfully --

THE COURT: I intend to ask my own, guided to an extent by all of yours. In any event, what is your problem?

MR. STILLMAN: I would like to then object to the Government's proposed question number 22. The pages are not numbered. It starts at the foot --

THE COURT: I understand you. I am not going to charge any such thing.

MR. STILLMAN: Thank you.

THE COURT: That is not my style. I agree with you. In fact, there are a few other things I am not going to charge here too. However, at the end -- I am going to ask you, of course, if there is anything you think I overlooked, and that includes anything in your helpful submis-

sions in writing or, indeed, anything that occurs to you during the process.

All right. We will take a short recess until the panel comes up.

MR. STILLMAN: Your Honor, while the panel is coming up -- thiswould not interfere with that -- I have noticed that some of the judges are using different procedures in jury selection in the exercise of challenges. How are we going to proceed?

THE COURT: I don't know quite how to answer you.

MR. STILLMAN: Is it 2-1, 2-1?

THE COURT: Surely. No doubt about it in this case.

MR. STILLMAN: Very well, sir.

MR. MARTIN: Your Honor, I take it you do not pick the replacements until somebody is challenged. Some of the judges have used another procedure whereby they call the first so many names, so you have the whole --

THE COURT: No. We will put 12 people in the box. We will then go to one, two-1, and we will replace the persons who are challenged, in what I will call the traditional method.

MR. MARTIN: Fine, your Honor. Not the Pollack method?

THE COURT: No, correct. I understand you.

(Recess.)

(A jury and three alternate jurors were duly impaneled and sworn.)

THE COURT: Mr. Velie, if you are willing to proceed, I believe that what you told me as your time estimate, it should bring us about to the end of the day, is that a fair statement?

MR. VELIE: I believe so, your Honor.

THE COURT: All right.

MR. VELIE: May it please the Court, counsel, Mrs. Lights, ladies and gentlemen of the jury. This case is about fraud and deceit. It is about fraud and deceit in the preparation of phony financial statements by accountants. The accountants are the defendants, Anthony Natelli, who sits here, and Joseph Scansaroli, who is at the end of the table.

It is the preparation of fraudulent financial statements which isthe crime charged in the indictment. Despite what you heard when you heard the plain language of the indictment read to you, the Government assures you, I assure you, this isa simple case.

The Government is going to prove to you that the defendants, Mr. Natelli and Mr. Scansaroli, prepared financial statements for a company called National Studen Marketing Corporation. Those financial statements said, in

effect, that the company had tremendous earnings and the company had tremendous sales. In fact, when they said it, Mr. Natelli and Mr. Scansaroli knew that the sales were non-existent and so were the earnings.

People who read those financial statements were cheated. They gave up money and they gave up property in order to get the stock to buy, in effect, the stock of National Student Marketing. They gave up their own business in many cases, in order to receive National Student Marketing stock. They wanted to own National Student Marketing stock because they thought it had wonderful earnings and sales just the way the financial statement said.

But the financial statements were not true and these people were cheated.

Naturally it is against the law to put false or misleading information in financial statements. You will be hearing about the law from Judge Tyler at the end of the case. The law for your purpose is the Securities and Exchange Act of 1934. It was passed and signed in 1934 to protect the nation from economic disaster by securing the integrity of the securities markets.

The law requires disclosure of financial information about companies who sell their stock to the public. That way people will know what they are getting.

Some of you said that you owned stock, and you'll forgive me if I talk about this at some length. Others of you may not be familiar with this. The fact is, if you go out to the market to buy a tomato, you can look at that tomato, you can hold it in your hand and squeeze it, look at the price, and you know pretty much what you are getting for that price.

Shares of stock are just paper. One piece of paper looks pretty much like another. So that the shares of stock, for instance, in a fly by night uranium company looks just as good to many people as the shares of Telephone Company.

How do you protect yourself when you buy stock? The law protects you. The law says to people who sell stock, people like you, members of the public, the company must tell what its sales are, what its assets are, what it owns, what its earnings are. That way people stand a chance when they go out to buy stock, of not getting cheated.

The law says that the financial statements that are required to be made must be filed with the Securities and Exchange Commission. False statements, as I have already said, in those statements required to be filed is a crime. It is a fraud.

My name is Frank Velie. I'm an Assistant United

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States Attorney. It is myduty to present this case to you on behalf of theUnited States.

Seated at the Government's counsel table are Jed Rakoff, who is also an Assistant United States Attorney, Jeffrey Rosen, who is a lawyer for the Securities and Exchange Commission, and Ian Dingwall, who is accountant for the Securities and Exchange Commission.

Our duty will be to prove to your satisfaction under the law as it is explained to you by Judge Tyler, that Mr. Natelli and Mr. Scansaroli prepared the financial statements we are all talking about here, to prove that the financial statements were false in that they showed tremendous sales and earnings when, in fact, these fellows knew there were no sales and earnings, to show they knew these sales and earnings didn't exist, that they knew they were putting out phony financial information.

The Government will prove to your satisfaction that these men, Mr. Natelli and Mr. Scansaroli, had a powerful and a simple motive. It is only fair to ask yourselves, as I am sure many of you will during the course of the trial as you sit here now, what would make previously honest men put out fraudulent, deceitful financial information, commit a crime such as this?

Don't look for payoffs, don't look for theft, don't look for bribes of any kind. That is not part of this case.

The Government will prove that the motive was an overpowering one. As I am confident that many of you will recognize, it is a coverup.

You see, what happened in brief is this: These men, Mr. Natelli and Mr. Scansaroli, were responsible for financial statements for National Student Marketing in 1968, the year ended 1968.

In the next year -- I should say the 1968 statements showed very large sales and earnings, and we will develop that with you in a moment.

In the course of the following year they learned that despite the fact that they had certified the financial statements which showed large sales and earnings for 1968, they learned that they had been in a large part no good, that they

had been written off as non-existent or uncollectable, that the balance was sitting there and could not be collected u nder any circumstances.

When they saw this they became concerned, they became frightened. They knew that people had relied on the financial statements that they put out in 1968. They knew that people had relied on the large earnings and sales that had been shown and had given up important property, valuable property in exchange for National Student Marketing stock.

They realized that they could be in real trouble if the truth came out as to the circumstances of how they went about preparing the 1968 statements. They realized in short a terribly important fact, that they could lose their licenses to practice as certified public accountants if the truth were to come out as to what had happened with respect to National Student Marketing in 1968.

To cover up their part in the matter, Mr. Natelli and Mr. Scansaroli, in a second set of financial statements, this time issued in 1969, hid the fact of the writeoff, hid the fact that a million dollars of National Student Marketing sales had been written off, taken out, erased from the books of the company as being non-existent or no good or uncollectable.

They hid that fact. They didn't let on for a minute that the 1968 report was unreliable and should be withdrawn, should not be relied on by anybody.

They showed those 1968 sales and earnings in the later statement that I have told you about as if nothing had happened, as if there had been no writeoff.

In fact, they showed in that second financial statement later earnings of the company based on the same kind, very poor kind of accounting. We will prove and submit that the 1969 sales shown in this second set of financial statements was equally weak, was equally false and they knew it.

Thus, the second set of financial statements is, and I will be referring to that as the proxy statement -- I will explain that in a minute -- this proxy statement gave no hint at all of what these two men knew. National Student Marketing was a losing proposition, losing company.

Instead the financial statement painted a tremendous rosy picture of health of National Student Marketing. As a result of this proxy statement, which is the subject of this indictment, even more unsuspecting people gave up their businesses, gave up their property, in order to obtain what they thought was stock in National Student Marketing and those people got cheated, too.

It is the coverup in the second set of financial statements, proxy statement, which is the crime charged here.

That is the story in brief. The story begins in August of 1968. In August of 1968 National Student Marketing was a relatively new, relatively small company in a pretty new business.

They were in the business, I think you will hear in the proof, of delivering promotional materials, advertising materials on behalf of their clients.

What they did in effect was they had people out on campuses, college campuses or high school campuses throughout the country who they said would tack up posters for advertisers and they also sent advertising materials by what is sometimes called direct mail. I think when you receive it in your house, you probably call it junk mail. That is the service they provided. They would deliver professional materials by direct mail.

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In August of 1968 National Student Marketing had just completed its fiscal year. As many of you I am sure know, a fiscal year means for business purposes the company ended its yearly business on August 31st of each year.

So they pretended the year would start for business purposes on September 1st and would end on August 31st of each year.

So on August 31, 1968, National Student Marketing engaged the firm of Peat Marwick, Mitchell & Company as auditors for National Student Marketing's 1968 financial statement. Peat Marwick & Mitchell I believe you will hear is one of the largest accounting firms in the world. Mr. Natelli, the defendant, was a partner in that firm. In fact, he was the partner in charge of the Washington, D.C. office of the firm of Peat Marwick & Mitchell.

Mr. Scansaroli worked for Peat Marwick & Mitchell as what is called a supervisor in the Washington, D.C. office.

Now, these two men, Natelli and Mr. Scansaroli, undertook to audit the 1968 financial statements for National Student Marketing. The 1968 statements, I will emphasize again, are the statements for the year which had ended August 31, 1968.

Now, an audit, as some of you I think have indicated you know, is an examination by an outside person, presumably independent of the company, who is in a position to examine various things and to certify the financial statements if he can. If the auditor does certify the financial statements the reader of the financial statements is assured that the statements are reliable, he can rely on them.

Presumably the statements are those of the company itself and not of the auditors. Nonetheless, auditors do a lot of different things to check into what those statements are all about. An auditor, as an example, if he wishes, can go out and look at the buildings or the machines that the company says it owns, take a look at them. An auditor can observe the taking of inventory. Let's suppose he is auditing a shoe company. He wants to go out in the storeroom and stand there with a clipboard and a pencil while the owner of the shoe store counts up the boxes in the store, an auditor is entitled to do that if he wants to.

The auditor can test and affirm receivables.

What does this mean? It means the company discloses a lot of different people on the money. Maybe they have sent bills to these people, maybe not. He can write a letter to each of the people who owes the company money

and say, "Write back to me, the auditor, and tell me do you owe this company money or not, what is the relationship that you have with this company."

I think I have already told you Mr. Natelli was the partner in charge of the audit. Mr. Scansaroli was supervisor of the day-to-day checking up that went on with respect to the audit work. Other accountants worked for them.

Now, along about the end of September of 1968 -- bear in mind this is a month after the year had ended -- a trial balance was prepared at National Student Marketing. A trial balance simplky totals up the figures which are in the company's books. That trial balance showed that for 1968, which had ended the month before, NationalStudent Marketing had a pretty healthy loss, a loss for 1968.

Following that the president of National Student Marketing, a man by the name of Cortes Randall -- you already heard his name; you will be hearing more about him -- told Mr. Natelli and told Mr. Scansaroli "That's wrong," says Mr. Randall,"There is no loss, there are additional sales we've got not reflected in our records anywhere."

Mr. Randall said, "These sales aren't in the form of written contracts with our clients. These sales are in the nature of oral promises made by clients to our sales-

men."

"Well, the clients," says Mr. Randall, "have promised the salesmen that they will use our services in the future."

Now, NationalStudent Marketing hadn't put up any posters yet with respect to these commitments and they hadn't sent the junk mail, they hadn't sent a bill, and they hadn't received a penny from these clients.

"But," Mr.Randall said,"The salesmen have done some work and obtained the oral promise that they will use our services in the future. Can't you let us anticipate the earnings so that we can have earnings for 1968 reflecting the work that these salesmen have done in trying to get the commitment, trying to get the business."

So Mr. Randall asked Mr. Natelli and Mr.Scansaroli if he could anticipate the income as of 1968 reflected in this activity that Mr. Randall was talking about, these oral promises.

Well, Mr. Natelli and Mr. Scansaroli agreed to do just this even though they knew that National Student Marketing hadn't received a penny for this so-called work or sent a bill. They knew that the sales were not legal, binding contracts but were based instead on salesmen's statements that somebody had promised them they would do

business in the future. They knew that these sales made a difference between a big loss and an even more dramatic gain.

They knew that the company had not previously accounted for sales of this kind in this fashion in any material that went out before. They knew that the company had never even previously tried to do business on this scale before.

So even if the sales were committed, there was no indication that the company could perform the work and collect the money.

So late in October of 1968, a full two months after the August 1968 year had ended, two months after the year had ended, two months after the year had ended, Mr. Natelli and Mr. Scansaroli made an adjustment to the books of National Student Marketing and they added to the sales of NationalStudent Marketing $1.7 million of these oral commitments, we will call them, and Mr. Natelli and Mr.Scansaroli I think I have already told you were responsible for auditing the statements of National Student Marketing.

Well, how did they check to see if these oral commitments were what Mr. Randall was talking about after all. Remember, for virtually the entire amount there were no contracts, no binding contracts. Therefore, there

was no paper in a binder, it couldn't exist. So they couldn't check that.

Perhaps what they were talking about was confirmations. It might have been possible for them to send a letter to all of these clients and say, "Have you done business with National Student Marketing, have they designed a program for you, did they do something for you prior to August of 1968, are you committed in any sense to do some business with them and pay them any money?"

The fact is that they didn't do that and the reason they didn't do that was Mr. Randall asked them please not to.

Mr. Randall explained it to them this way. He said, "The situation is touch and go. We don't want to push these people too hard. We could lose the sales." Remember he is saying this after the year had ended.

So intead Mr.Scansaroli, who was doing the checkin in this regard, checked by telephone instead of sending letters.

Now, you might guess that he would pick up the telephone and call the contracting officer of the client and see if there was any such promise had been talked about here. But he didn't.

Several large commitments he check with other

people. He checked with the printer. The printer for National Student Marketing. He checked with advertising agencies.

Well, when National Student Marketing's 1968 annual report came out it was certified by Mr. Natelli for Peat Marwick, Mitchell & Company and it bore the signature of Peat Marwick, Mitchell & Company as a certified statement. It showed earnings before taxes of $690,000 and virtually every penny of that was these so-called oral sales, oral commitments.

Incidentally, you will hear in the course of this trial these oral commitments I have been talking about referred to by various different names. I hope you won't find it confusing. Sometimes they are called commitments, sometimes they are called oral commitments or oral contracts, sometimes they are called fixed fee contracts, somtimes they are called unbilled accounts receivable, sometimes contracts in progress.

Bear in mind it is all the same thing. In each instance with respect to what we are talking about here the company was booking as its sales and as components of its earnings and assets business which it said it received at the point when the client committed to do the business, not at the point when the bill was sent, not at the point

when they received the money, not at the point when they delivered the junk mail or tacked up the posters, but at the point when the company, the client, said "All right, we would like to do business with you in the future."

They would anticipate large percentages of the earnings they hoped they would get.

Now, without these fixed fee contracts, unbilled receivables in 1968, and after provision for taxes, the company would have shown a good size loss. Instead they showed a profit, and of course they had in it $1.7 million unbilled accounts receivable sales. With those $1.7 million unbilled accounts receivable they showed a profit, a profit twice the size they showed the previous year. National Student Marketing looked very ~~profitable~~, ~~It looked~~ like it was growing like mad. The price of National Student Marketing stock in the over-the-counter market reflected ~~these~~ earnings.

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Many of you may know what the over-the-counter market is. It is simply a market where people buy and sell stock. Like many markets, it operates on the simple principle of supply and demand. Given the fact that there is only so many shares of National Student Marketing stock, if a lot of people want it because it is showing great earnings, sales, that price is going to climb. A lot of people wanted National Student Marketing stock and it had a dramatically high price.

Well, were these sales any good? Not surprisingly, by December of 1968, with respect to virtually the total amount of these 1968 sales, with respect to virtually the entire amount, no contracts had been received or signed or executed, no bills had been sent. As far as anybody could tell, no services had been performed. These were services or sales that were supposed to have taken place the preceding August.

The accountants, Mr. Natelli and Mr. Scansaroli, understandably got concerned. They held a meeting in December 1968 with some of the people from National Student Marketing and Mr. Natelli uttered a clear warning. He said, "Next year we are not going to let you book sales of this kind unless they are firm enough to confirm in writing."

Well, National Student Marketing was run by ag-

gressive and, I think it is fair to say, unscrupulous businessman by the name of Cortes W. Randall, whose name you have heard now. He took advantage of the fact the 1968 report showed dramatic sales increases and earnings increases and while National Student Marketing stock was highly valued he went out aggressively and gobbled up business of several other companies, taking those businesses in exchange for shares of National Student Marketing stock.

There was a lot of National Student Marketing stock sitting there in the treasury. People wanted that stock a lot because, among other things, sales and earnings were shown in published reports to be very high. People wanted the stock so much that they would be willing to give up their own little businesses in exchange for National Student Marketing stock.

Again, they thought they were getting a good deal because there were such high reported sales and earnings. Again, they got cheated.

As the year went along, it became increasingly obvious to everybody who knew about this that the 1968 sales were non-existent and in late April of 1969, only about six months after the 1968 report had been issued, National Student Marketing itself wrote off as no good, over $1 million of the $1.7 million of unbilled accounts receivables and sales that

had been put on there. National Student Marketing wasn't quite sure how to account for a write-off as massive as that, $1 million written off, all at about the same time.

So they checked with Mr. Scansaroli and Mr. Natelli. Mr. Natelli and Mr. Scansaroli thought about it and suggested writing off three quarters of a million dollars of 1968 sales retroactively, that is, subtract it from the company's books, in effect, have the 1968 year not disturb the 1969 year then in progress.

The balance of the sales were written off by the company, $250,000 of it was written off by the company as a deduction from the 1969 sales, again as reflected on the company's own books. But bear in mind that nobody, nobody, told any member of the public, nobody told anybody at the Securities and Exchange Commission, nobody told anybody who had given up his business or was about to give up his business for National Student Marketing stock, nobody let on that $1 million had been written off, that the 1968 report could not be relied on. Nobody told those people a thing.

The reason for this silence, as we have already suggested, was this coverup mentality, a fear that the incredibly lax procedures of allowing these sales to be booked in the first place, after the year had ended under the circumstances I have told you about and with the auditing

that I have told you about, a fear that if that came out, that $1 million of it had been written off, that these guys could lose their licenses.

Well, on June 3, 1969, Mr. Natelli spoke to Mr. Kurek, Bernard Kurek, who was the chief accounting officer for National Student Marketing, controller of National Student Marketing, and Mr. Natelli told Mr. Kurek that he was concerned at the vast amount of new unbilled accounts receivable that the company continued to bill in 1969.

Mr. Natelli said that he was concerned that the company might have as many as $4 million of unbilled accounts receivable sitting on the books at the end of the year, the same kind of sales we have been talking about, commitments. Mr. Natelli said that these so-called sales make or break the company and Mr. Natelli said if anything should happen the accountants working for him could lose their certificates, their licenses to practice as certified public accountants, and their careers would be at stake.

Mr. Natelli and Mr. Scansaroli were indeed concerned that their careers were at stake because they had audited and certified National Student Marketing's 1968 report, and as I have already pointed out to you, it showed terrific sales and it showed teriffic earnings. Now, they knew that there were no such sales or earnings. Meanwhile,

of course, National Student Marketing had acquired several other businesses in exchange for the stock, the owners of those companies had been cheated.

On June 9, 1969, six days after the meeting between Natelli and Kurek I just told you about, Mr. Natelli met Mr. Randall, President of National Student Marketing, and some other people of National Student Marketing. Mr. Natelli and Mr. Randall discussed the fact that approximately $1 million of these sales had already been written off. Mr. Natelli complained that the enormous sales in the nature of unbilled accounts receivable were still being reported and booked. Mr.Natelli said that 3.3 million of unbilled accounts receivable, sales, these commitments we have been talking about, were sitting on the balance sheet, and Mr. Natelli pointed out "You can't collect them. There are no legal, binding contracts. I doubt if you can sue on these things."

One of these new sales was a commitment, so-called, from the Pontiac Division of the General Motors Corporation. It had been booked as after the period which ended February 28, 1969. That's the first six months of National Student Marketing's fiscal year. This Pontiac contract was in excess of $1 million and it was booked on the same basis. It was booked in April, after the six months period had ended

in February, and booked as of February. But when it was booked they hadn't gotten the posters for Pontiac yet, they hadn't sent the junk mail for Pontiac yet, there was no signe contract in the file. There was a letter indicating that the commitment existed, but they hadn't sent a bill yet to Pontiac or collected a penny.

Now, during this very time, in the Spring and later in the Summer of 1969, the proxy statement, which I already told you about, was being prepared by National Student Marketing Corporation and preparing it along with National Student Marketing people were Mr. Natelli and Mr. Scansaroli. Bear in mind that the indictment in this case has specific allegations about that proxy statement.

Well, what is a proxy statement. A proxy, as I am sure many of you know, is simply the way that a shareholder in a company exercises a vote, and a proxy statement is the way that the company tells the shareholders what it is that i being voted on, what position the company has, and any background information which is important to the question at issue. This frequently includes financial information about the company or any other companies involved.

Thisparticular proxy statement was for the purpose of issuing more shares in National Student Marketing. As it turns out, they had been using up so many shares

gobbling up these other companies, they needed further shares and they wanted in particular to gobble up four named companies named in the proxy statement and they were asking the shareholders in the proxy statement to authorize the issuance of these further shares, authorize the mergers or the acquisition that they wanted to make.

Well, a proxy statement of this kind, I think you will find from the evidence, is required to be filed with the Securities and Exchange Commission. I think you will find in the evidence, again, and in the law as instructed to you by Judge Tyler that a false statement on a material matter in a proxy statement such as this, is a crime.

Well, itwas in this proxy statement that the cover up plot really got to work. Obviously disclosure in the proxy statement contemplating acquisitions of people's companies, disclosure that $1 million of last year's sales had to be written off because they can't be collected or they don't exist, that's terribly important information.

It shows what kind of a company you are dealing with. It shows whether the management knows what it is doing or is capable of telling you the truth. If the truth had been disclosed, $1 million written off of last year's sales, it might well have been that the mergers or the acquisitions would have fallen through. It could have meant

lawsuits by the people who had already been gobbled up, given up their companies in exchange for stock.

It could mean investigation by the SEC and as Mr. Natelli had pointed out to Mr. Kurek, it could mean that the accountants who had prepared the original statements and certified them, could lose their licenses to practice as certified public accountants.

To prevent these things from happening, Mr. Natelli and Mr. Scansaroli went to great pains to conceal the truth.

In preparing proxy statement figures for 1968 Mr. Natelli and Mr. Scansaroli literally scratched out every single footnote or number which would have given any hint to anybody who read those statements that there had been the write offs, write offs of a million dollars.

And, in addition, Mr. Natelli and Mr. Scansaroli buried the loss resulting from these write offs not with National Student Marketing, which had lost the money, but with companies later acquired, buried those figures where nobody would find them, so they wouldn't have to change the 1968 results by a penny and nobody would ever find out that there had been these million dollar write offs.

You are going to actually see in evidence, a draft of the proxy statement with Mr. Natelli's writing all over it, scratching out footnotes, burying numbers where they don't belong to hide the truth.

The proxy statement also included figures for the year 1969, precisely figures for the first nine months, first three quarters of 1969.

The indictment charges that those figures are false also.

A little background information. I will show you why that's been charged. While the proxy statement was in preparation in August of 1969, the Board of Directors of a company called Interstate National Corporation, a large insurance company based in Chicago, the Board of that company was deciding whether to be acquired by National Student Marketing. They had the 1968 report, showed great figures, they had a draft proxy statement that showed pretty good figures, too. It didn't yet have in it -- it was an early draft and it didn't have in it the nine month figures. They couldn't vote on the matter until they had all the figures. They were waiting.

Mr. Randall, who was at one of their meetings, left that meeting in the late afternoon and flew in his personal Lear Jet from Chicago to Washington, D.C., had he picked up Mr. Natelli and Mr. Scansaroli, picked up Mr. Kurek, picked up some other people, and he flew them from Washington right here in New York City, to Pandick Press.

Pandick Press is a financial printer. It was there

that draft proxy statements were being printed up by this printer.

These accountants, Mr. Natelli and Mr. Scansaroli, plus Mr. Randall, plus Mr. Kurek and these other people were working long hours into the night, into the next day and into the next night, preparing these figures for the proxy statement.

Along about 11 o'clock at night, some figures were prepared for the nine-month statement. This is the period that ended as of May, two months before all this.

These figures were phoned from the Pandick Press to Chicago where the Interstate Board people were waiting. As they continued to work into the night, at about 3 o'clock in the morning, Mr. Natelli spoke to Mr. Randall about the Pontiac contract. You remember this is the so-called commitment for about a million dollars, over a million dollars from Pontiac. That thing had been booked as of February, here it was August and Mr. Natelli said, in effect, this thing won't pass the smell test.

Booked as of February. Here it is August, no billings, no activity, you haven't done the work, we haven't seen anything to warrant carrying a contract this enormous. You've got to take it out.

Well, Mr. Randall didn't bat an eye. He cooly--

this is 3 o'clock in the morning at the printers -- he cooly suggested switching for the Pontiac commitment a commitment for Eastern Airlines. The Eastern Airlines commitment was supposedly a sale made in the period which had ended in May. Again, it is August. Nobody but nobody, had mentioned this enormous sale, virtually the same size as the Pontiac contract, between May and August.

Here it comes up at 3 o'clock in the morning in a moment of crisis.

Well, Mr. Natelli thinks about it for a little bit and lets it go in. It does go in. It goes in as a large part of the earnings for the 1969 first nine months.

With the write off of the Pontiac contract -- I don't know if you are totaling it up. It would be totaled up for you later.

Over an 18 month period, $3.3 million of contracts of this kind had been booked and over $2 million had been written off. The proxy statement didn't say any such thing, didn't tell anybody about that fact, didn't tell anybody about the million dollar write off itself, didn't tell anybody about that switch pulled at the last minute at the printers.

The proof will show that without billed accounts receivables, if you were to take them off the books, that nine-month earnings statement would show a loss, too.

Well, of course the Interstate National Board didn't have any of these facts. They were known to Mr. Natelli and Mr. Scansaroli and some of the National Student Marketing people, but the Interstate Board didn't know it. After their meeting and after they got this information with respect to the nine month figures, which had been telephoned to them, not the bad news, just the nine-month figures that the company claimed they had, the Interstate Board in August voted to be acquired by National Student Marketing so that the 1300 people who had invested in the insurance company, would receive instead shares of National Student Marketing.

Well, a few days after the events at the Pandick Press, something else happened which I am sure you will be interested in. Another accountant from Peat, Marwick and Mitchell, a man by the name of Douglas Oberlander, discovered the fact that virtually the entire balance of 1968 unbilled accounts receivable contracts was still on the books, it hadn't been written off. Virtually that entire balance was no good and should be written off. He prepared a schedule which proved it.

He showed it to Mr. Kurek. Then he showed it to Mr. Scansaroli. Then Mr. Scansaroli talked to Mr. Natelli about it. Well, Mr. Natelli and Mr. Scansaroli decided that these facts didn't have to be disclosed either. So the proxy

statement was filed with the SEC about a month later, in September of 1969, and it didn't have a hint in it of any of these dismal pieces of news that I have been standing here telling you about.

There wasn't a hint that the large earnings of 1968, 1.7 million of unbilled accounts receivables sales, had been written off or were known to be highly suspect and uncollectable and inactive, without a hint that the 1969, the nine-month profits was based on more of the same, similar unbilled accounts receivable, including that last minute switch, the Eastern Airlines contract popped in there at 3 o'clock in the morning.

Instead that proxy statement showed a picture of dramatic growth in National Student Marketing and glowing economic health.

On the strength of these entirely positive financial statements in the proxy statement, three more companies were promptly gobbled up, Frommer, Five-Dollar-A-Day Tours were gobbled up, a company called Mar-Clay, Mail Bag International; two companies not mentioned in the proxy statement, Simmons Associates and a company called Varsity House, all of them essentially for National Student Marketing stock.

People gave up their businesses for the stock thinking they were getting a good deal. None of the people

who gave up their companies knew the awful truth that I'm standing here telling you about, truth known, of course, to Mr. Natelli and Mr. Scansaroli, as the proof will show.

The final incident, the Government submits, will show you Mr. Natelli's intent to deceive beyond any question.

A few days before the closing of the final merger contemplated in the proxy -- this is again the Interstate National deal -- remember in August the Board of Directors made a decision whether to be acquired. Now they are going to have a closing in October, and a closing is like a house closing. It is actually the place where the deal takes place, where you give over one thing and receive the other. They are going to have a closing on October 31 at which time the Interstate shareholders would become shareholders of National Student Marketing and give up their investment in the insurance company.

Mr. Natelli pursuant to the merger agreement, asked an accountant who worked for him at Peat, Marwick and Mitchell, to prepare what's called a comfort letter.

A comfort letter is a letter from the accounting firm to the company to be acquired and it tells him, in effect, we don't know of any new developments that might affect your judgment as to this deal since the time that you

received the last news from us.

Well, the accountant man by the name of John Johnston, went to work on the comfort letter and he promptly found the write offs that Mr. Oberlander had been talking about in his schedule and which you will recall Mr. Natelli and Scansaroli declined to make. Mr. Johnston found some other things as well.

So Mr. Johnston and his immediate superior, a man by the name of Bill Cologna, drafted a pretty sober comfort letter. It had some bad news in it.

When Mr. Natelli returned from a brief illness back to his office, most of the work on the comfort letter had been done.

Now, Mr. Johnston and Mr. Cologna are essentially honest accountants. They called it the way they saw it in the brief amount of time available to them. They went in there and found some bad news and wrote a letter which reflected it. While the bad news was reflected in the comfort letter that they were able to find, it couldn't have all the bad news. That was known only to Mr. Randall, Mr. Kurek, Mr. Scansaroli and Mr. Natelli. Mr. Scansaroli at that time was working for National Studen Marketing. Mr. Natelli knew that a decision had to be reached essentially that day by the Interstate people whether to close the deal. Did he pipe

up with this additional information about the Eastern switch, about the million dollar write off? No, the comfort letter went out and it gave the impression that maybe there were only two or three hundred thousand dollars of contract write offs when he knew there had been over 2 million. So the comfort letter went out and it didn't have enough news in context. While the Interstate people were startled, what they did see, they couldn't see it all in context. They permitted the deal to close. All 1300 of the Interstate shareholders gave up their investment in this insurance company in exchange for National Student Marketing stock.

A brief word at this time about some of the proof. You will be hearing in the case from what the law calls an accomplice witness. You will be instructed that the law is with respect to an accomplice witness, that you should scrutinize his testimony with care.

The Government invites you to scrutinize the testimony of the accomplice witness with care. You will be hearing from Mr.Bernard Kurek, comptroller of National Student Marketing. He will tell you that he has pleaded guilty to this charge and he will be here to testify.

He will tell you in brief outline about how National Student Marketing didn't have a gain until these unbilled accounts receivable that were booked in year-end 1968, how they came to be written off, how Mr. Natelli and Mr.Scansaroli learned about the writeoffs and participated in writeoffs.

He will tell you what happened at the Pandick Press at three o'clock in the morning.

Scrutinize his testimony with care. Take a look and see the extent to which he is corroborated by documents in evidence, by the testimony of other people.

Now, the indictment specifically charges two false statements, false statements in two places in the proxy statement.

As I have already stated, one has to do with 1968 sales and, in essence, it is this: The Government will prove that Mr. Natelli and Mr. Scansaroli knew that a million dollars of 1968 sales had been written off and they didn't give a hint of it. They not only failed to disclose it, but they buried the truth, they buried the body where

nobody would find it. They subtracted the losses written off from National Student Marketing contracts with figures from newly acquired companies. That way nobody could tell what actually happened.

I am going to take a minute now to go over to the blackboard and give you an illustration, if you will bear with me, of what it is that you heard when Judge Tyler read you the indictment this morning.

This is the figures in the footnote regarding 1968 sales and earnings which Paragraph 3 of the indictment which you heard this morning talks about.

These are the figures for 1968. Original and reported, almost $5 million of sales for National Student Marketing as the company was constituted when it reported its 1968 sales and earnings.

After that and before the proxy statement was prepared they obtained some other companies, pooled companies and they have pooled together in the proxy statement the earnings of the pooled companies, newly-acquired companies, and the company the way it existed when they first reported the earnings. These are the companies I think I told you Mr. Randall went out and gobbled up on the strength of the earnings in the 1968 report.

Add them together and you get the figures which

are displayed elsewhere in the proxy statement for 1968. A similar calculation is done. This is sales, these are earnings, earnings derived from those sales.

What the proxy statement doesn't tell anybody is that out of the $5 million in sales,these guys knew that a million dollars, $1 million, had been written off. This figure here is a phony also, the line for pooled companies.

This is where I told you they buried the body. You will find from the proof that the sales of the pooled companies isn't this number at all, it is a larger number.

What Mr. Natelli and Mr.Scansaroli did was take three-quarters of a million dollars of these, a million dollars written off, and subtracted it from the pooled companies which didn't lose it. Similar calculations happened with respect to the earnings.

The portion of the earnings you will find was subtracted from the earnings of the pooled companies. Nobody could tell that this figure had been changed or should have been changed because a lot of earnings had been written off.

That is not all. The proxy statement had a false statement in another place, and I think I have already told you this as well, nine months, three-quarters earnings

for 1969. The nine month figures in the proxy statement blandly state that National Student Marketing had earnings of about $700,000.

Now, a healthy chunk of this was made up of the Eastern Airlines commitment which you heard about was hatched at three o'clock in the morning at the printers. I think I have already told you that without the unbilled accounts receivable sales on the books at the time, there wouldn't have been any earnings at all for National Student Marketing for that nine-month period.

You see, by then Mr. Natelli and Mr. Scansaroli knew that with respect to unbilled accounts receivable sales, something like $3.3 million of them had been booked and over $2 million of them had been written off and a large part of the balance just couldn't be collected and was sitting there on the books uncollected.

Nowhere in the proxy statement did Mr. Natelli or Mr.Scansaroli reveal any of this.

I should point out to you that you will hear evidence of yet more fraud on the part of people besides Mr. Natelli and Mr.Scansaroli. You have heard, in fact, from Judge Tyler when he read the charge to you that various other people are charged with this crime.

You needn't concern yourselves with the guilt or

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innocence of those people. Only two people's guilt or innocence is before you for decision.

But I do want to point out to you that Mr. Randall was, of course, an unscrupulous individual and he cheated a lot of people. He went out and he obtained companies for his company in exchange for stock and never told them what he knew about this fraud either.

Of course, I think you will find that Mr. Randall's fraud couldn't have gotten to first base without the parallel fraud of these accountants, Mr. Natelli and Mr.Scansaroli, who hid the absolute wretched truth from readers of the financial statements.

I think you will also find that Mr. Randall never troubled Mr. Natelli or Mr. Scansaroli with all the gross details of the things that he was doing,Mr. Randall was doing. Mr. Randall in particular didn't tell Mr. Natelli or Mr.Scansaroli everything there was to know about that Pontiac contract which was written off or the Eastern Airlines contract which was hatched at three o'clock in the morning.

The Government submits, however, that the proof will show beyond beyond question that Mr. Natelli and Mr. Scansaroli knew and buried the essential facts, the facts that National Student Marketing had written off a million

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dollars of its 1968 unbilled accounts receivables and with it its 1968 profits and that National Student Marketing had puffed up the 1969 results with the same kind of phony baloney.

They never told anybody about these things.

The case is a simple one even though you will hear a lot of evidence. It boils down to this: When accountants know that a company's sales and earnings aren't there and then go and tell the world that they are, it is a fraud, it is a crime, it is the crime charged here.

Please pay careful attention to the proof as it comes in. Some of the proof may appear to you when you hear it to be complicated or technical.

I will have an opportunity at the end of the case to explain to you what I believe the proof has shown. You will get full instructions on the law from Judge Tyler. I am confident that you will accord to the other attorneys the same courteous attention that you have given to me.

Make no mistake about it, this is an important case. It is important to the defendants, they are charged with a crime. It is important to the Government which is charged with seeing to it that people high and low in life, if they have committed crimes are brought to the bar of justice.

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It is important to the Government and to you we submit to see to it that the integrity of our financial markets and our stock markets are kept sound exactly the way that Congress intended them.

Remember, the proof can only come in one witness, one exhibit, one question or answer at a time.

I do ask you to be patient.

Keep an open mind. Wait until all the proof is in, all the arguments are made, wait until the law is announced to you and then you will have the full picture.

If you accord the defendants and the Government a fair trial on the evidence alone, not on speculation or prejudice or misplaced sympathy or anything else, that is all anybody can ask.

If you do this, if you do decide the case on your oaths, to decide this case on the evidence, I am confident that you will find these defendants guilty as charged.

Thank you.

THE COURT: Mr. Lights and ladies and gentlemen, before you go a few directions that I would ask you to keep in mind.

First of all, through no fault of anybody here in the case something has come up which will oblige me to take care of a case which is already on trial before

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another Judge. The other Judge became extremely ill last evening. I happen to live near him and went to see him and his family. Therefore, because of the obligations of the law, I have to familiarize myself with his case and I am going to instruct the jury in that case tomorrow morning early. However, since this may take some time, I am going to have to ask you to come in at two o'clock tomorrow. In fact, come in at five minutes to 2:00. Go directly to your jury room.

I don't want you to come in any earlier because in taking over for this other Judge it may take me most of the forenoon and right into luncheon.

Second of all,as you know and as you have already been told, we have not heard even all of the opening statements. So I ask you to keep an open mind and indeed, more forcefully, I think the better idea is not to even think about this case when you are away from the courtroom.

Third of all, although I have no reason to believe that this will happen, if it does happen and if you should see specifically any publicity having to do with this case or perhaps with the company known as National Student Marketing or of the firm of the defendants, Mr. Natelli and Mr. Scansaroli, called Peat, Marwick & Mitchell, please don't read it, put it aside.

If bychance you are sort of forced into seeing something on television or hearing something on radio, again, which I have no reason to believe will happen, but just as a forewarning, try not to listen to it. If it happens, you are sort of backed into it by surprice, let me know if it happens and where it happens so I will know what to do about it. I don't, as I say, have any reason to believe this will happen.

I say to you this because, as you know, we hope and expect under the system to have this case decided solely on the basis of information that is evidence which comes out here in this room in your presence.

Of course, in accordance with the law,which the Judge will give you before you deliberate in the case.

It has been a long day and you have been most patient. Let me hold you no longer. I will say good evening. You don't have to come in the building at all tomorrow until five to 2:00. At that point go directly to your jury room and we will get a prompt start at that time.

JUROR NO. 8: Until what time will we stay tomorrow?

THE COURT: We will stay until about 4:15. As a regular matter -- this request of yours reminds me, I thank you for the reminder -- we will sit, unless I tell

you otherwise in advance, from 10:00 o'clock each morning until about 4:15 each afternoon, give or take a few minutes.

That is the regular court day you will follow.

As I also stated I have other cases on Friday, unless I advise you otherwise in advance. As matters now stand, this Friday, for example, I know I have other cases. So plan on that as a free day for your own purposes.

Very good. See you tomorrow at five minutes to 2:00.

MR. MARTIN: Your Honor, could we see you after the jury leaves, please?

THE COURT: Yes.

(Jury absent.)

End 5B

(In the robing room.)

MR. STILLMAN: Your Honor, I have certain motions that I would like to make based upon certain things said by Mr. Velie in his opening. I felt I did not want to interrupt his opening. I know that has been a general practice in this courthouse, one I have always followed, that is, not to interrupt my adversary.

I felt I should put the following on the record and that is why I asked to see you.

First of all, your Honor, towards the end of his opening Mr. Velie made a great point of pointing out the misdeeds of Cortes Randall and said that in essence the conduct of my client and Mr. Martin's helped Randall commit his other crimes.

I submit there is no such charge in this indictment. I submit there was a conspiracy count considered by a grand jury and not an iota mentioned by either of these two men in that conspiracy court. There is no allegation that they were co-conspirators.

I think it is outrageous that the Government should keep pushing ahead to spill over the misdeeds of Cortes Randall onto them.

MR. MARTIN: Your Honor, I want to joint in that application. It seems to me Mr.Velie charged our

clients with conspiring with Cort Randall. That is not the charge in the indictment.

As your Honor knows, in taking Mr. Randall's plea what Mr. Randall pleaded to was lying to the auditors. I think on that state of the record that it was a misrepresentation to this jury in Mr.Velie's opening statement.

THE COURT: Why didn't you gentlemen interrupt?

MR. STILLMAN: Judge, again --

THE COURT: What do you want me to do now it is said?

MR. STILLMAN: I think --

MR. MARTIN: Your Honor, it is not a question for any instruction. I think it is a question for a mistrial or not. I am not a believer in curative instructions in most instances. I think the Supreme Court in Bruton said --

THE COURT: I am asking you what is the relief you are seeking on this motion.

MR. MARTIN: A mistrial, your Honor.

THE COURT: Mr. Velie, what do you say?

MR. VELIE: I think it is only fair to point out that all that was said was that in fact Mr. Randall had not told the whole truth to the accountants but that they should bear in mind Mr. Randall had gone up and

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gobbled up these companies and he was able to do so because these people hadn't blown the whistle on the proxy statement.

Now, it seems to me that is exactly what Count 2 is all about.

Count 2 is false statements in a proxy statement. It was designed to gobble up companies. They knew it was designed to gobble up companies. It is a joint crime charged.

I think the opening was entirely proper and shows what the Government proposes to prove with respect to a perfectly proper charge brought by the grand jury.

End 6A

MR. STILLMAN: Mr. Velie, you are the same assis-
that who just told this jury that the conduct of my client
aided Cort Randall in his other crimes, aren't you? That is
what you said out there in the courtroom and that is not what
your indictment says.

THE COURT: Gentlemen, I am going to deny the
motion for a mistrial for a number of reasons, but just as a
starter, count two, as I observed this morning, of course, is
not the same as count one. However, count two does charge
a number of persons in combination along with the two defend-
ants on trial.

MR. STILLMAN: It does indeed, Judge Tyler. It
charges them with a specific crime, not a series of crimes,
not a conspiracy to do other things, but a specific crime, and
I respectfully urge your Honor -- of course, I will be doing
it throughout the trial -- to hold the Government to that
charge and not to allow them to bring in all the other things
that Randall and his cronies were doing.

THE COURT: I will agree with that one. We are
not going to hear about all the other things which have nothin
to do with count two.

But we have here before the Court a motion for a
mistrial and I am going to deny that motion because this
trial has along, long way to go, if we ever get off the

ground with all our other problems, and I think all of this will be cured with alacrity probaby sooner than later. In any event, it will be cured when it counts, when this case goes to the jury, and it will also be cured, if there is any significant problem about evidence, where I will agree with you that we are not going to hear evidence about other crimes not charged in count two.

Suffice that unto today. See you tomorrow at 2 o'clock.

MR. STILLMAN: I am sorry, Judge Tyler. The second is at that point in his opening statement where Mr. Velie said -- my notes, I think, are fairly good -- that it is a crime when you put something into financial statements when that is not so. I believe that was the substance of it.

It seems to me it is a crime when you do something unlawfully, wilfully and knowingly.

THE COURT: As this court will fulsomely charge at the appropriate time.

MR. STILLMAN: Very well, sir. Thank you.

THE COURT: Let me point out to you gentlemen another thing. The exhibits, as you well know, have been pre-marked. I would hope that somewhere along the line somebody has an exhibit list.

MR. VELIE: Yes, your Honor. We will furnish the

Court with one.

MR. STILLMAN: We have one now, if you want.

THE COURT: In the trial I just finished I never saw an exhibit list. In fact, I never saw a document unless I vaulted over the bench and went down and collectively grabbed counsel by the scuff of the neck and dragged it out of them. I hope we don't have to do that here.

MR. VELIE: Your Honor, many of the documents that we have are extremely bulky binders and they just don't xerox terribly well. I don't know how the defendants managed to get theres done, but it must have been an enormous expense. I am sorry to say in many instances we don't have a copy for the Court, but I will be happy to hand the original up as promptly as we can.

THE COURT: That will help. I don't insist on copies. Somewhere along the line, particularly where there is a problem, I would want to look at the document.

MR. VELIE: Your Honor, the 3500 material of the first three witnesses was a long time ago turned over to the defendants. Tomorrow morning, if your Honor wishes to have it I will turn that over to the Court, or even this evening, although I know you are busy on the other matter.

THE COURT: I think because of my other problems in this case of Judge Bonsal's that tomorrow will be fine.

MR. VELIE: Fine.

THE COURT: See you tomorrow.

(Adjourned to 2 p.m., October 22, 1974.)

United States of America

vs. 74 Cr. 43

Anthony M. Natelli and
Joseph Scansaroli

New York, New York.
October 22, 1974 - 2:00 P.M.

(Trial resumed.)

(In the robing room.)

MR. VELIE: Your Honor, before we begin there are two things I would like to have some help from the Court on.

One is Mr. Stillman yesterday was good enough not to interrupt my opening and to reserve objections until the end. I would be happy to do the same thing if the Court would permit me to approach the side bar at the end of the openings and make whatever objections I have.

I would like not to interrupt counsel, if I don't have to.

THE COURT: It is a tactical rule not to interrupt but there is no legal rule. If all of this goes on and you think there is great error being committed what can the Court do about it if it doesn't know about it? That is

what puzzles me.

MR. VELIE: Very well. I will be guided by that.

MR. MARTIN: Let me say, your Honor, since the Government has no right to appeal, I have no objection to that procedure.

THE COURT: Again, I don't see why we have to take all of this down.

MR. VELIE: There is one other brief matter and that is this: Mr. Martin has been good enough to inform me that he proposes to show portions of what may or may not later be exhibits to the jury, a procedure which I think is improper on opening, and I would request a ruling that he not display materials to the jury unless they are portion of the pleadings or an introduction of names or something like that.

THE COURT: You fellows are really doing fine. I have never seen that done before, and I think for a good reason. If a matter isn't in evidence it shouldn't be shown to the jury.

MR. VELIE: Thank you.

MR. MARTIN: Your Honor, I think this is what is going to come into evidence and what we intend to show.

THE COURT: You can certainly tell them what

you intend to show, but I don't think we should be showing exhibits. They may well be admitted without any contest.

MR. MARTIN: It is already stipulated.

THE COURT: May I suggest that you not show the jury any exhibit. If you want to describe what you think will be offered in the form of an exhibit you certainly may. But let's not be passing around any exhibits.

MR. MARTIN: I don't intend to pass them around, your Honor. I do intend to read certain things that are documents that are coming in rather than paraphrase.

THE COURT: If you want to do that that is fine. I was addressing the notion that you were going to be passing exhibits around and I simply said no. If you want to take the risk that such and such is going in evidence or there is a stipulation and you want to say it will show the following, and you want to read from it, and you think that is proper opening, I am not going to argue with you.

MR. MARTIN: Thank you.

THE COURT: If the Government wants to object they can object.

MR. VELIE: I have objected.

THE COURT: Let's get out there. We have wasted a lot of time.

(In open court; jury present.)

THE COURT: Good afternoon, ladies and gentlemen.

MR. MARTIN: Your Honor, may I proceed?

THE COURT: Mr. Martin, please do.

MR. MARTIN: May it please the Court, Mr. Velie, Mr. Foreman, ladies and gentlemen of the jury:

As you were told yesterday, my name is John Martin and it is my privilege to represent Tony Natelli, a citizen very much like yourselves in what for many is one of the most serious moments of his life.

With me is Miss Santangelo, who will be working with me during the case.

The first thing that I want to say to you -- I wish I had the opportunity to say it yesterday -- is that opening statements are not evidence. Nothing Mr. Velie said to you yesterday, nothing that I will say to you this afternoon is evidence in this case. All that an opening statement is is a brief opportunity for the lawyers to tell you what they think the evidence will be, indeed, to tell you what they think some of the evidence will be, since, as his Honor told you, this case is going to take three or four weeks to try, and we will speak to you for a half hour or 45 minutes.

So we can only summarize what we think the evidence will be.

Often in a criminal case I am really reluctant to make an opening because I think that the jury may get the mistaken idea that I am here to prove something to them. I am here to prove nothing. I am here to prove nothing because Tony Natelli does not have to prove anything to you. He is not here to prove that he is innocent of the charges contained in that indictment.

He has entered a plea. He has denied that charge. And by that denial he has cast upon the Government the burden that it will have throughout this trial, to satisfy you not that Tony Natelli made good or bad judgments in accounting, but that Tony Natelli is a crook, Tony Natelli set out and wilfully and knowingly prepared financial statements that he knew to be false and fraudulent, and that he did this, the Government says, to cover up.

That is the charge.

Some of you have indicated you have served in a civil case. In a civil case the burdens are much different. That is because in a civil case you are dealing with questions of who owes money to whom. A criminal case is much different. The consequences of a finding of guilty in a criminal case can strip a man of his civil rights as a citizen, subject him to a possible prison sentence, and worse perhaps of all, brand that man a criminal before his

family and his community, and it is because the consequences of that verdict are so severe that our society has created a system which says before that is done, the prosecution must prove to you beyond a reasonable doubt the charge that it has made, the charge here that there was a coverup.

So I ask you to keep those principles in mind as you go back and look at the evidence.

What is this case all about? I think what this case is about is that this is a case of going back some six years, taking some events out of context and trying to make that a criminal case. What I would like to do with you in these few minutes that I have this afternoon, is go into the evidence and try to put the events into the context which they were. I can't give you the entire context. These are events that took place over a course of a year, which will be isolated out.

I want to try to give you a little more of the context than you now know, to show you what was done here was not done criminally.

This was a man, two men, actually, Tony Natelli and Joe Scansaroli, and indeed many others, trying to do their jobs as accountants, as auditors.

The job is not easy. I think one of the problems that you may have, a problem, I think I had before I became familiar with accounting, is what does an accountant do. I think there is a great tendency for people to mistake the job of an accountant and the job of a bookkeeper and a statistician. A bookkeeper adds up columns of figures and thi one equals that one, so you know what the balance is. A statistician works out relations between numbers.

Probably the easiest example is in baseball, where

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a statistician computes batting averages. If Henry Aron gets up to bat ten times and gets four hits he bats 400.

Every statistician looking at that set of facts will say Henry Aaron batted 400, hitting 400 times out of ten.

Accounting is far more difficult and I would like to put this into an accounting context by giving you a very simple example.

Let's assume for a minute that in September 1973 a man got some investors together and they put up money to buy a farm and he spent the winter clearing the land and he spent the spring planting.

Then it came to August 31 this year. Now he had land cleared, he had corn growing, he had wheat that he already harvested and put in the silo, and he had tomatos that would be ready to pick any day.

He can go to an accountant and he can say "Here is what I spent and here is what I received." What he received is nothing. What he spent is a lot of money. It would be unfair to say "You made nothing this year, all that effort was lost," because obviously the man has crops that are grown, he has value that he has put to the land by clearing it. So the accountant has to try and come up with values for the work that has been done.

The problem is created because those values are to be measured from period to period, year to year. This man has investors who want a report on the first year. That's the situation facing the accountant. How do you value the crops? How much of the cost of clearing the land do you charge to this year's crop as opposed to the value that will be put into the farm forever?

These are the types of questions. How do you go from period to period and judge what the income is? I think that is about as simple an example as I can give you. What I think that example does do is show you that the questions that an accountant has to deal with are not simple questions. It is not simply adding up columns of figures.

You will find that during the course of their work in National Student Marketing, and, of course, their work with other clients, Tony Natelli and Joe Scansaroli made hundreds of decisions and hundreds of judgments as to what was the right way to do something. The question for you to decide at the close of this case is not whether 100 accountants looking back six years later armed with the benefit of hindsight would say they made the right accounting judgment or the wrong accounting judgment. The question is are these men crooks. Did they set out to do something that they knew was crooked, fraudulent. And I would ask you as

you consider that question, let's not try and push a lot of events together, let's try and look at this thing as it was happening, and let's try and ask yourselves one very basic question that you will have to answer:

Was there a day that Toney Natelli got up in the morning, said goodbye to his wife and children and went out, and on that day he left an honest man, a man who had never ha any trouble with the law before, he left his house an honest man, and somehow during that day he did something that he knew would be dishonest, he committed a criminal act.

Ask yourself that question. When you look at the evidence for that proof, which is necessary, you will find that it never happened. You will find that Tony Natelli went out day after day and did his job and he did what he thought he should do at the time.

I would like to go back now and look at this case and try and put some of the facts into context. The one thing that I would like to talk about at the outset, one fact that gives a context to this case, is the indictment.

The indictment charges these defendants, Tony Natelli and Joe Scansaroli -- and I will obviously talk primarily about Tony Natelli because he's my client, Mr. Stillman will talk to you about Joseph Scansaroli -- charges them with only one thing.

Count two of this indictment is the indictment that is on trial here and that charge relates to the preparation of a proxy statement in August and September of 1969. That charge is the only charge against them.

Ladies and gentlemen, you will hear from the evidence that there was a conspiracy to defraud. That conspiracy to defraud is the count charged in count one of this indictment in which these clients are not named. You will find, ladies and gentlemen, that that was a conspiracy to defraud involving Cortes Randall, the vice president of National Student Marketing, Bernard Kurek, its chief financial officer, and other officers of National Student Marketing.

Thepurpose of that conspiracy was to defraud and to defraud among others Tony Natelli and Joe Scansaroli. The purpose of that conspiracy was to keep the truth from them about National Student Marketing and to provide them with false and fraudulent documents to get them to believe that what the officers of National Student Marketing said was true was, in fact, true.

What is incomprehensible here is how the Government can recognize these two men were the victim of a fraud being perpetrated by the officers of National Student Marketing, and, on the other hand, say the victims of the fraud somehow were part of a scheme to defraud. I think this is the evidence that is going to come in here, that you are going to see.

With that in mind, before I put the indictment down, there's one other thing I wanted to mention. Mr. Velie mentioned this yesterday. We will hear from Bernard Kurek. He said that you should -- he will be an accomplice and he is going to be testifying as a Government witness. You should view his testimony with some scrutiny.

He said, Mr. Kurek had pleaded guilty to the count that is on trial.

One other thing you should know about the context of Bernard Kurek's testimony. He pleaded guilty to one of 11 counts to which he was named, pleaded guilty to one of 11 counts. The other counts will be dropped at the time of sentence because he's cooperated with the Government. That's the context.

Let's go to the context of 1968 when Peat, Marwick and Mitchell first became associated with National Student Marketing Corporation. You will hear that this happened

late in August of 1968, when Mr. Randall approached a partner of the firm of Peat, Marwick and Mitchell, who he had met. This was a partner who was in Kansas City.

Mr. Randall said he would like to have Peat Marwick be the auditors for National Student Marketing. Mr. Natelli was then the partner in charge of the Washington office, was asked to meet with Mr. Randall and if he would handle this account for the short period that National Student Marketing would maintain its offices in Washington -- they were in the process of switching to New York -- and shortly thereafter the matter would be taken over by the New York officers of Peat, Marwick & Mitchell.

He came into a situation for a short time basis. As it turned out, the financial officers didn't move for several years. He came into what basically he thought was a short time situation.

What he came into, ladies and gentlemen, was not a brand new company that had never had done anything before. He came into a company as an auditor of a company that had sold over 200,000 shares of its stock to the public, approximately 200,000 in the spring of that year.

He came into a company that in August of 1968, before he had anything to do with it, put out a nine-month financial statement to its shareholders. It told the share-

holders in that nine-months financial statement that it had substantial amounts of income and profit and that statement was not prepared by Tony Natelli or Joe Scansaroli or Peat, Marwick and Mitchell. It was prepared by an independent certified public accountant in Washington by the name of Michael Sullivan.

Michael Sullivan prepared those nine-month figures and those earnings and those sales and he used the percentage of completion method of accounting to record income on the contracts that the company had, commitments from clients to use its services.

So when Tony Natelli and Joe Scansaroli became associated with National Student Marketing they didn't invent oral commitments, they didn't invent percentage of completion. Indeed, they weren't faced with this question at all until after the year had ended, August 31, 1968.

As Mr. Velie toldyou, companies can pick any month, any date to end their year. National Student Marketing had a year ending August 31, 1968.

So when they came into this company they didn't invent anything, but they were faced with the situation, faced with the situation where people had purchased stock on the basis of financial statements, financial statements prepared by a certified public accountant who had said that it

was appropriate for this company to use percentage of completion accounting, to account for verbal commitments that the clients made to the company because that was the way that was best in this situation matching the company's income with the company's expenses because there was a lot of expense involved in these sales, designing programs for clients and meeting with clients and presenting the clients the program to be used and the programs were basically mechanical.

Once you got the commitment, there was little to do but tack up posters, as Mr. Velie said, and mail out pieces of literature. A substantial effort and expense went into obtaining the commitment. The judgment was made that the best way to account for this, the best way to match these costs and this revenue, was to use percentage of completion accounting. This isn't something they hid. When they prepared the financial statements they set out a footnote in it saying this is the method we use. When they wrote up their work papers as to what they did in this case -- this is not a document that's been prepared with hindsight, ladies and gentlemen, it is a document that's going to be in evidence.

This is what they wrote up as the reason they decided to go along with this method of accounting.

Mr. Scansaroli wrote a work paper dated October 26, 1968, which would be in evidence -- 8-31-68. Special sales, August 31, 1968. "This is the first full year in which NSMC has had this type of operation on this scale. NSMC has been using this suggested method for the first three quarters of the year and there is no reason to discontinue this method now. It would be a lot easier if this was the second or third year of full-scale operations. We would have proper files and statistics to work with. However, this is the first year and we have little alternative but to follow the suggested method. Also based on the going concern concept, it would appear that we should record these contracts as outlined above. If we don't record them, we would probably show consolidated loss for the year ending and many stockholders would seel their stock based on one figure without reading the narrative portion of the report.

"Subsequently in future quarterly reports the company would show a large profit on these of over one and a half million dollars of commitments outstanding. Many of the stockholders would probably wish they hadn't held on to the stock and we would be criticized for not using proper accounting principles."

They reached a judgment, they made a decision, they wrote it down.

Ladies and gentlemen, I don't think there is going to be any evidence anyway to indicate that when they worked on those reports, Tony Natelli and Joe Scansaroli did anything other than what they thought was an honest job. There were these commitments that Mr. Kurek and Mr.Randall told them existed. They thought this was a fair way to account for it, give the stockholders the information they needed to make a decision, tough decision, but they made it, honest decision.

I don't think there is any question of that.

Mr.Velie I think would have you believe that this honest decision in 1968 somehow gave rise to a motive later on. Well, it was called an overwhelming motive. Overwhelming, that is an adjective. It doesn't make it so. Two men have acted honestly and they know they are honest men, acted in good faith. I don't think anything is going to give them a motive to commit a crime.

I would like to go on to 1969.

Before I do I want to focus on one other thing that I mentioned. They were first confronted with this problem, these oral commitments, how to handle them, after the year had ended. August 31, 1968 had come and gone when

they first were presented with the problem. They were then told the company had been using this method and they were faced with the problem of dealing with it. They couldn't go back and make records for prior to August '68. They couldn't change the facts that existed. So that they accepted this method, but when they put out the August 31, 1968, report shortly thereafter, Mr. Natelli had a meeting with Mr. Kurek and Mr. Randall and other officers and he said, "Look, we were faced with the situation, we had no control over it. I want it clear from here on there should be written commitments on these contracts and I want these things to be confirmed in writing when we do our audit, 8/31/69. This is the way it should be done."

They set it out. They dealt with the problem. They set out to set up a better method. That is the background of '68.

There is no charge in this indictment that anything criminal was done in 1968. The charge relates to 1969. Again we have got to get context. Well, the context is in August of 1969, National Student Marketing had grown considerably. I am afraid I am going to have to tell you about another accounting principle called "pooled earnings of interest." You heard that term used. What is it all about? Very simple. If you have two companies in

1973 and they are independent companies, each makes $100. Then in 1974 they merger. They become one company. Pooling of interest of accounting says that from now on when you report on those companies and try and show people what they did previously, it is unfair to report on one company previously and the results of the operation of two companies now.

What you do is tr eat it as a marriage. Two peopl are married. You tr eat that marriage as if it had always been, and every time you go back and set what their sales were and what their net worth was before they were married, you treat it as if they were married.

So that when in August of 1969 you report on National Student Marketing Corporation, you don't report on the company that actually existed in August of 1969, you report on all of the other companies that are now part of it, as if it were one.

To use a simple example, if firms A and B had $100 of sales in 1973 and in 1974 they merged, now you are putting out the '74 report. Between them they had $200, each contributed the same $100 in '74. It would be an unfair comparison to say, look, this firm made $200 this year and last year it made $100 because the two parts that made up the $200 this year made up the $200 last year. That i

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what pooling of interest accounting is about.

So that when Tony Natelli and Joe Scansaroli came to work on the proxy in August and September of 1969, as accountants that company that existed in August of '68 just didn't exist any more. They now had to report on a company not that had sales of $5 million in August of '68, but a company that had sales of $11.5 million. That is simply the context for what was done.

I would like to focus on the specific charges contained in this indictment.

This indictment refers to a proxy statement. The proxy statement contains thousands of numbers, hundreds of footnotes. It will be in evidence.

This case revolves around one footnote in that indictment and really one figure for sales. I want to make one thing clear. The indictment has two separate charges. It says that in restating, that is in republishing the results for 1968 there was a failure to make a disclosure in the footnote. You are dealing with disclosure in a footnote.

There is a column here in the box which shows the consolidated statement of earnings for 1968. It shows it for the year ended August 31, 1968. It shows sales of $11,541,000. There is no claim that that sales figure was wrong. It shows earnings, net earnings of $773,000.

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There is no claim in this indictment that that figure was wrong. Those were correct figures.

What this indictment is about is the fact that there was a footnote added back here that says there was certain writeoffs that had occurred during the past year on the figures that had been originally reported by the single company in the original August '68 report.

We are dealing not with false sales or false earnings, but simply the fact that there was an item that was not disclosed. Why wasn't it disclosed?

Let's talk about context again. Mr.Velie talked about some words being scratched out that would have disclosed this. Those words were scratched out by Tony Natelli, they were. Those words were first written by Tony Natelli. Tony Natelli drafted a footnote that disclosed that.

I don't want to take the time to tell you all of the reasons. You will hear them. He decided that that particular footnote did not contain enough information. He made the decision. He made it partly because now he had a different company.

There was one other item that did go into that decision and that is important.

You will recall yesterday Mr. Velie referred to

the fact that there were sales written off up here. Then he said there was also a figure in earnings, effected earnings, that wasn't show either. That figure was $21,000, 21,000 out of 773,152, 21,000 net effect on earnings..

Most people who look at stocks, what are they interested in? Sales? Does it make any difference if the company has sales of $100 million if it doesn't make any profit?

I would rather have a company with sales of $90 million and $10 million of profit than a company with $100 million of sales and no profit.

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That is what they call the bottom line.

What is the effect on earnings? The writeoff of sales effected earnings. But they had also been told by Carol Raimondo, who is a tax specialist, that in the 1968 figures there was an error made in computing the taxes that were listed, the tax expense, and the net effect of these two errors was $21,000.

That was why the decision was ultimately made that this footnote wouldn't be written, why Tony Natelli scratched out what he had previously written.

The Government would have you believe, ladies and gentlemen, that that was the desperate act of a man bent on covering up. Look at the evidence. You will find no evidence of coverup.

Probably the most significant part of this particular item is this was not a decision Tony Natelli made on his own. It was a decision made as an accountant should make a decision. He consulted with a man named Otkiss. Mr. Otkiss was a partner in the Philadelphia office of Peat, Marwick, Michell, who had special expertise in SEC matters and he was assigned solely to review that proxy. He had absolutely no connection with the 1968 audit. He had none of the alleged motive that the Government says Mr. Natelli and Mr. Scansaroli had.

Mr. Natelli raised this problem with him. He said, "I've got this footnote. It doesn't say everything it should say. I really have to write a lengthy footnote. The net effect on earnings, after all, was $21,000."

Obviously Mr. Natelli agreed.

"In those circumstances the matter is immaterial, take out the footnote." Right decision, wrong decision? You could debate that I suppose for hours. Honest decision? I don't think there is any debate.

This man does what he should. He consults the man who is put over him to review these things. He says, "This is what I am thinking. What do you think?"

The guy says, "I agree," and it is done.

That is what the criminal case is about. That is why this man is a crook, according to the Government.

Listen to the evidence. Did Tony Natelli all of a sudden, an honest man, become Tony Natelli, a crook? I don't think you will find that, ladies and gentlemen.

The second item that I want to talk about is the question of the sales. There is a figure in the proxy for the sales not for '68, but you now have the company operating for ninemonths in its fiscal year 1969, and there was a figure for sales contained in the proxy which said that the sales for that period in 1969 was $11,313,000. The indictment

charges that Mr. Natelli knew that about $800,000 of those sales were false and fraudulent. That is the charge. What is the proof? Well, the proof starts with an item called the Pontiac contract.

Mr. Randall had, told Mr. Natelli he had, said, "We got a commitment from Pontiac, $1 million, and they have given us a letter."

He said he wanted a letter and he got the letter. Mr. Natelli looked at the letter and he said, "This is not enough. The letter says, 'We are planning to use your services.' That is not a commitment."

Mr. Randall says, "We will get a better letter for you."

Youwill find this dialogue continued over a period of time. Finally they got to the time where Mr. Natelli said, "Hey, we are printing a proxy here. It has those Pontiac deals. You don't have a commitment letter. I said we are going to insist on commitment letters. This isn't a letter that will satisfy us."

There was a great deal of argument. Mr. Randall wanted to fly Mr. Natelli to Detroit, talk to the man from Pontiac, see that this was a real commitment. The discussion went on.

Also at the same time Mr. Natelli was told there

was also a commitment from Esstern Airlines for a substantial amount. The night they got to the printer he said, "No, I will not accept it. I don't want this man to tell me it is good if there is not a written commitment. This is not it."

So then Mr. Randall starts arguing with him about "Well, we have the Eastern commitment and that is signed. I will show you that, I will show you the documentation that goes behind it. We don't want to have to reprint this huge proxy again to change all these numbers. Why don't we just switch one for the other, don't change any numbers, but you will see that we have the documentation for Eastern."

Mr. Natelli does what he often does. He sat down with a piece of paper and started to make some notes about that proposition. That note will come into evidence. He thought that proposition was weird -- said so right in his memo -- to just go and switch these two.

He came to the conclusion that even though it was going to cost more money to go through this printing of the proxy, they could not accept the Eastern letter, simply just switch it around.

Indeed, he also wanted to satisfy himself that this was a real commitment.

Mr. Natelli over the course of time was given

a letter signed by a man from Eastern Airlines, not from the company, signed by a man named Mullen, and it said -- directed to account executive, National Student Marketing -- "This is to confirm our verbal commitment given to you on May 14, 1969.

"We will accept and utilize during the fiscal year 1970 an amount of not less than $820,000 of National Student Marketing Corporation's services as offered to us in your proposal originally submitted May 7, 1969. We look forward to continued success in our youth marketing efforts and to our relationship with National Student Marketing Corporation."

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He was given that. An account executive met with him. He had a detailed program that had been submitted in May. He showed him that program, explained all of the programs within the overall program that were going to be used, what each was for, what the costs were. He convinced him that this was a real program, it was a real commitment. He went back and he checked the time records that the account executives kept to see that they really were working on this project. He had a signed commitment which said what they wanted. He had proof that this was a real program.

So he made a judgment. This is what he said was needed to record this income in this way. They had it. He couldn't object to it. An honest decision? No question about it. He made the decision.

If he was involved in a scheme to defraud why go through with the Pontiac thing? If it is part of the scheme he leaves it on.

Another interesting thing. The context. The difference in profit as the result of many taking Pontiac off and putting Eastern on was a difference in profit of over $300,000. It was $300,000 less profit recorded in that proxy statement because Tony Natelli insisted on taking that Pontiac commitment out.

There is one further situation alluded to that

Mr. Natelli did not get to be involved in. That was several days later when Doug Oberlander was assigned by Mr. Natelli, Mr. Scansaroli, to go over and check some of these unbilled receivables.

There were questions about some. He said, "Did you discuss them with Mr. Kurek?" He discussed them with Mr. Kurek. He said he was questioning these items, Mr. Kurek got mad, he said they belonged on the books, they shouldn't be taken off. That is what Mr. Kurek told Oberlander.

So Mr. Scansaroli went over and met with Mr. Kurek. Mr. Kurek insisted. Some stayed on, some did not. Mr. Kurek insisted. These were not audited figures. They were company figures.

He made a judgment. "The company says they are good. All right, I will leave those on. These have to come out. I talked to Bernie Kurek. We wrote off some. He thinks the others are good. The company's figures are not audited."

Those are the items that are the subject of this indictment, honest decisions made by guys who make hundreds of decisions. Ladies and gentlemen, this isn't a case about accounting. He talked about a lot of these issues. This is a case about men, that man right there, a man you have never seen before.

We will bring in some people from his community, some people who know the type of man he is, people who know him in business, people who know him at home. They will tell you the type of man he is. They will tell you he is a man who has a representation for honesty and integrity. You are going to hear from the people who worked for him, who will tell you that Tony Natelli never asked them to cover up a thing.

The cover up is nonsense. It is not here, ladies and gentlemen. These are two hard working men, respected by their friends, who never asked anybody to cover up anything. I submit, ladies and gentlemen, when you have heard all the evidence in this case you will be convinced there is no basis for this charge and that these men are innocent of the charge contained in this indictment.

Thank you very much.

THE COURT: Ladies and gentlemen of the jury, we will take a recess at this point. I hope we will be about ten or fifteen minutes. Then we will call you back and hear the last closing argument.

(Recess.)

(In open court.)

THE COURT: Will counsel come up to the side bar, please.

(At the side bar.)

THE COURT: Look, our jury is already evidencing their true New York flavor and character. They want the holidays staked out for them. Next Monday, is, I now recall with horror, a Federal holiday.

MR. STILLMAN: What holiday is that?

MR. MARTIN: Veteran's day.

THE COURT: With all the problems we have in this country, why anybody decreed that I will never know. Be that as it may, it is, and if they want to observe it I guess I have to let them.

MR. VELIE: I don't know about that. You are the Judge here. Let's work.

THE COURT: Wait a minute, Mr. Velie. That sounds great, particularly for the record.

MR. VELIE: I am sorry. I will strike it if you wish. I didn't mean to do that.

THE COURT: It sounds marvelous and I applaud you and everything else. You misunderstood my point. The jury apparently, or some of them, want to observe the holiday. I would agree that they are probable entitled to it, particularly since our marvelous legislature has decreed as such. I know you are willing to work. So is everybody else willing to work. But that is not the point.

Understanding that, do you mind if I treat with them at the close of the day and find out? If they want to observe the holiday, I am going to let them observe the holiday.

The next matter that comes up is election day. There under the law I believe the citizenry are only allocated so many hours a day free from work in order to vote. This I propose to say. We will take up election day after we see how far we get. Maybe we will get there faster than we think.

All right. Mr. Charles Stillman, are you ready?

MR. STILLMAN: Ready, sir. I will give it a go.

MR. VELIE: As long as we are all here, Mr. Stillman, tells me he is about 25 minutes long and doesn't know if he is going to be accurate with that prediction. If we end at about 3:30 with Mr. Stillman's opening, do you want us to proceed with proof or start fresh in the morning?

THE COURT: I would rather start with the proof. We are getting to the point where every hour counts.

Now, you may be removed from this problem because of my jury in Judge Bonsal's case upstairs. I don't know what is liable to happen there. So I can't give you any iron clad guarantees. But if there is no interruption, I suggest we start with a witness.

MR. VELIE: Very well.

THE COURT: Is it any secret now as to who he may be?

MR. VELIE: None at all. It is Bernard Kurek. They have known this since October 1st.

THE COURT: They may have, but that is not the inquiring person at the moment.

MR. VELIE: I am sorry. I wanted you to be the first to know, Judge.

THE COURT: Where is that 3500 material you promised me?

MR. VELIE: The large box on my desk.

THE COURT: You mean it is in a box? All right. Let it repose there and we will see what happens.

(In open court.)

THE COURT: All right, Mr. Stillman.

MR. STILLMAN: Thank you, your Honor.

May it please the Court, Mr. Velie, Mr. Martin, Mr. Natelli, Joe Scansaroli, Mr. Foreman and ladies and gentlemen.

Insofar as I am concerned, the opening statement I'm about to make in this case is the most important opening statement I have ever had the opportunity to give. I think as you listen and hear the evidence unfold in this case you will begin to understand why I say that to you.

As you know, my name is Charles Stillman. Ed Tanenhaus from my office is going to help me to present the evidence for Joe Scansaroli.

It appears in this courtroom, represents the first opportunity in a court of law for the evidence on behalf of Joseph Scansaroli to be presented to a jury of his peers. It is the first opportunity he has had since this awful nightmare began for him to show the 12 people and our alternates, that he is not guilty of the charge made in this indictment.

Now, because this is a criminal case, Mr. Martin has adverted to some of the things that begin to happen. Insofar as I am concerned, the most important thing that

begins to happen is that the principle of reasonable doubt is applied by you ladies and gentlemen as you appraise the evidence.

Judge Tyler at the conclusion of the case will tell you more about this principle. But in substance, I submit he will tell you that a reasonable doubt is the kind of doubt that would make you hesitate to act in the normal course of your lives.

He will tell you that a reasonable doubt --

MR. VELIE: Excuse me.

MR. STILLMAN: He's not going to tell them that?

MR. VELIE: I object to legal principles from the charge being given at this time. I believe that is for the Court.

THE COURT: I'm going to overrule your objection as such, but note that counsel proceed on their peril. If they anticipate what the Court will say, they may be proved to be wrong. I assume Mr. Stillman knows that and we will go along.

MR. STILLMAN: Thank you, your Honor.

As you sit and listen to the evidence, listen for the telltale signs of reasonable doubt, listen to witness' testify who have a motive to protect themselves, look for the lack of evidence, listen to the evidence and say

to yourselves: Wait a minute. Would a man who is supposed to have committed a criminal act behave in such a way?

Ladies and gentlemen, I suggest to you when we pull it all together at the end in summation, you will be satisfied that there is more than a reasonable doubt as to th guilt of Joseph Scansaroli, that there is no doubt but that he is innocent.

Now, this opening statement is something like a road map, an outline. As I prepare to speak to you this afternoon, it dawned upon me that we are in an election year. In an election year politicians get up and make promises to us about what we are going to do and then before the time comes for them to execute on those promises we as citizens have to decide should I vote for that man, should I make my decision on his promises.

But this opening statement is something more than that because what we promise to you here in our opening statements, you will have to be satisfied when all the evidence is finished that we met our promises and then you will make your decision.

You will have the opportunity to decide whether Stillman, Martin or Velie put up the evidence that they said to you and promised to you we were going to put up.

I suggest to you, ladies and gentlemen. that as

we listen to the evidence in the course of this trial, certain of the promises made to you by the prosecutor in his opening statement will not be supported by the evidence.

Now, it was interesting because, as I listened to Mr. Martin deliver his opening statement, he adverted to the fact that Mr. Velie had spoken yesterday about this Pontiac commitment, and I believe Mr. Velie's words were, "Then there was the Eastern commitment which was virtually the same as Pontiac."

Well, I assume by that that Mr. Velie means that virtually the same is a difference of two to 300,000 because, as Mr. Martin mentioned to you moments ago, when Pontiac came out and Eastern went in, this company went down by two to $300,000.

Mr. Velie overlooked mentioning that to you in his list of promises.

Mr. Velie also adverted to Mr. Oberlander, Doug Oberlander, niceyoung man, accountant, works for Peat, Marwick & Mitchell, or used to work for Peat, Marwick, Mitchell, and Mr. Oberlander will testify here, and you can hear this from his own mouth, but hold me to my promise.

Mr. Velie said that Oberlander went in and he found that some of these receivables that we are going to hear so much about were no good.

Now, the impression I had, and I don't know whether you had the same impression, was that Oberlander marched in there to do this work on his own.

Ladies and gentlemen, the uncontradicted evidence you will hear is the fact that Joseph Scansaroli assigned Douglas Oberlander to go in and do the work that Oberlander is going to tell you about. So that Mr. Velie in his set of promises forgot to tell you about that.

The other thing that Mr. Velie talked about, and then I am going to move on to some other things, is that he told us about some businessmen and the impression I had, he was talking about people who kind of run a candy store, luncheonette, who happened to sell their little companies to National Student Marketing Corporation, and I would gather that Mr. Velie perhaps was trying to create the impression that these people who sold their companies to National Student Marketing Corporation were just kind of ordinary citizens like us.

Listen to the evidence and watch when these men come to testify about the little businesses that they were selling to National Student Marketing Corporation for million millions of dollars.

Askyourselves whether these men are unsophisticates ask yourselves whether these men are just kind of ordinary

people like us, ask yourselves whether or not these men who sold their companies went along to make a profit based upon their attempts to sell their businesses, which they had a right to do.

There's been some talk about auditing and we are going to hear a lot about that in the course of this trial, and accountants, and what they do, and I believe Mr. Velie talked about it a little bit. I hope you will bear with me, and I don't mean to be presumptuous, but I would just like to tell you what I think the evidence will show you as to what it is an auditor does. Who is an auditor? What does he do.

To most of us an accountant, if you had the opportunity to make some money in the course of a year, he helps you prepare you tax return, or he might be working for H & R Block and you go into his office and he helps you prepare a tax return.

But there is a function of these auditors which is the function that we are going to talk about in this trial.

Basically I suggest the evidence will show you that it goes something like this: The Court Reporter decides that he wants to get a picture of what his financial worth is as of a certain time and so he sits down and he writes down, I have so much in the bank, I have a car, I have a living

room, so far, I have this, I have that. On the other side he writes down, well, I owe so much to so and so and John owes me $100. He's really not sure what to do with it so he calls his accountant in and he shows him this piece of paper that he's prepared, and he says, well, tell me, am I on the right track?

What the accountant then does is something like the following:

He says, okay, you have so many dollars in your checking account. Can I see your checkbook?

Okay, you show him the checkbook and he goes through that.

He says, all right, let me see your bank statement and he attempts to put the two together. Some of us have great trouble with that, trying to show that the amount in your checkbook reconciles with what you think you have in there, but he checks that out for you.

Now he goes through our court reporter's home and he said, wait a minute, you left out the P & O. Let's add that in there.

Now he said to him, well, John owes me $100. He can call John up and say,John, the court reporter says you owe him $100. He can write a letter to John and say, will you please confirm to me that you owe $100 and so forth.

When the acccuntant is finished what does he do? We are dealing with the so-called certified statements that you have heard of.

What he does is he says to you, Mr. Court Reporter, the financial statement that you have given me as I have now gone over it fairly states what your worth is as of a certain day. It is not the accountant's statement, it is your statement and you know in a sense better than anybody what your worth is. In some of the things that he does he has to rely on your credibility. He has got to be sure, to the extent that he can, that you are telling it to him straight, but if you have lied, if you have held something back from him, well, it can be very difficult for him to find that out.

So he concludes to thebest of his knowledge, based on his experiences, that your statement fairly presents your worth as of a certain date.

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He doesn't guarantee it, he can't do that. But he can tell you whether or not it fairly presents it.

The work that auditors do when they go on into more complicated business, for example, oil companies, they have to determine whether or not there is a certain amount of oil that the company has and they may never even see the oil. It is in the ground somewhere.

It seems to me that the bottom line that you will conclude when all this is finished is that these men are engaged -- they are professionals, they are licensed -- they are engaged in a decision-making process. They get paid to make decisions, some easy, some hard. But they make them to the best of their ability.

I was struck by something that happened during the course of the jury selection which I think at least gave me some idea of what this decision-making was.

In the course of it the Judge asked, and I don't know whom the lady or whoever it was is sitting with us now, but the lady had some piece of knowledge about something and the Judge asked whether that fact would affect the ability of the juror to decide the case fairly.

Now, at that point the Judge went on to say to the juror: "All we can do is ask you to exercise your

gab-3

best judgment to make a fair appraisal of the situation, and that is what this case is all about.

Now, you are going to hear about percentage of completion accounting. It is not very simple. On the other hand in some respects not very complicated.

I can tell you that after all of the days and months that I have attempted to master it, I probably still don't understand it. But let me try to give you what my understanding is so that when all this is finished, hopefully you will have some understanding of it, too.

Let's first recognize that the evidence will show that this so-called percentage of completion accounting is a recognized, accepted,permissible, proper method of accounting. The accountants use it in certain types of business. Does it fit? They have to decide does it fit.

As Mr. Martin told you, when they came into this company they were already using this percentage of completion kind of accounting.

In a sense what it is trying to do, ladies and gentlemen, is to match the costs that a business has with the dollars.

I hope you forgive me if I blow this, but let me give it a go to the best of my ability.

What we are trying to find out in analyzing the

gab-4

particular business is whether or not the costs that the business has incurred in doing whatever its thing is, building a house, like the contracts of National Student Marketing was engaged in, whether or not those costs will fairly match the dollars that he will ultimately receive because this brings into play the type of accountingknown as accrual.

So far as we are concerned, you get a dollar in your pocket, you have a dollar in your pocket, and you pay out a dollar, you pay out a dollar. But business can't operate that way. They may do a lot of work.

For example, a company that is engaged in construction. You are building a house, they do 70 per cent of the work to build the house, Most of them expense it out and they are going to get paid for all the work that they did. If we wait until the money comes in in the following year, what is the picture going to look like? In this year you are going to have all these expenses and no money coming in, so it looks kind of bleak, bad.

The following year you don't have the expenses, now you have all this income. What you are getting is this. YOu are getting peaks and valleys in the operation of these businesses.

So what the accountants are trying to do is to match the costs and the revenues. That is called percentage

of completion. You will hear more about it. The Government may even call some expert accountant who is going to tell it to us, too.

This method of acconnting, as Mr. Martin told you before, was adopted by this company before we came in and what Joe Scansaroli did as supervisor on this job working with Mr. Natelli was to attempt to the best of his ability to find out what the numbers should be for this company as of August 31, 1968.

The thing to bear in mind dealing with this percentage of completion, because Mr. Velie made the point -- if you remember, he said it wasn't billed, they hadn't sent a bill out yet for the money. That is true. That is absolutely true.

When you see the financial statement of National Student Marketing Corporation for August 1968, you will see that the financial statement says unbilled receivables, unbill So that anybody looking at it knew that this was an unbilled receivable.

And in a thing that accountants call footnotes, which are explanations of certain of the things in the financial statements, clearly spelled out, written out for anyone who wanted to see and understand, there was explained exactly what they were doing for this company.

National Student Marketing Corporation. this comp set out to capture the student market. It was their feeling, and you will hear evidence of this, that they could sell to the student market and they isolated the students as a definable market, and a bunch of young men got together to try to build a business to accomplish that fact.

The first witness we will hesar, a man by the name of Kurek, and I will say more about him in a few moments was the chief officer of this company. He will tell you about the hard work. He will tell you about the fact that these people were trying to do their thing, trying to build this company into a multi, multi-million dollar company to capture the student market.

Mr. Velie used an interesting word. He must have used it two or three times, and it didn't surprise me. He talked about junk mail, junk. What was that for? Why junk?

Well, that was to lead you to believe that this was just a sham, right? Junk mail costs millions of dollars to large companies who are trying to sell their product. They hire artists, they hire advertising people, they hire people like National Student Marketing Corporation to develop advertising campaigns to sell their wares to various people, to you and me and to others, and sometimes when you get the junk mail you go out and spend your money on something that

you read about.

These large corporations are prepared to do that. So there is no mystery. There is nothing special about this other than the fact that ask yourselves as this goes along, why did he use the word junk mail?

Mr. Velie has fairly acknowledged to you the fact that there will not be the slightest iota of evidence, not the slightest hint of the fact that Mr. Scansaroli or Mr. Natelli were in any way paid other than to do their work in the normal course of their affairs as accountants.

You will remember how he tries to develop an idea of what the motive is. But bear in mind, ladies and gentlemen that there is no financial motive, there is nothing, nothing that they stood to gain from this affair other than to do their work.

Mr. Natelli was a partner. Mr. SCansaroli worked for the company, for Peat,Marwick. There was nothing to gain other than to do their work.

In his effort to characterize what he says the evidence is I think that Mr. Velie did what I would suggest is a rather unfair thing. Perhaps it was unintentional on his part. But let's just talk about it. He chose to characterize what these two young professionals did as a coverup.

Mind you, coverup. Now, I think that we as people living in the United States, in New Yotk today, could fairly agree that the word coverup in the English language as used in this country is an ugly word. It is an ugly word. And he chose it, I suggest to you, to poison you against these two men.

And while I am unhappy about it, in many respects I am glad for it, because let's see what happens to his promis

What I would like to do is kind of prepare what I would call -- I am sure the accountants would shoot me -- I will call it a balance sheet, put coverup at the top, and let's weigh and see what this evidence is going to show about coverup.

Well, in order to have a good coverup, from what I read, the first thing you have to have is wholesale

destruction of documents. You have to get rid of the evidence.

Well, ladies and gentlemen of the jury, most of the evidence in this case consists of the work papers, the daily work that Joe and Tony were doing and the men working under them were doing as accountants for this company, these work papers.

Some of them are over here, some are in those Government boxes.

When they finish the job it is the responsibility of one of the men to put nice clips through them to seal for posterity what it is that they did. For good or bad, proper or improper, it is all there.

Now,ask yourselves as you hear the evidence come in and you see the work papers and you see the things that the Government says, "Aha, that's bad, aha, that's good," why, if you are engaged in a coverup, would you putit all together and seal it up forever, why would you have it so that anybody who wanted to see it could come in and look at it

In a sense these work papers are like a video tape replay. Whatever happened then we are going to be able to replay in this courtroom because these men sealed forever the work that they did. You will find everything in those work papers, other than the wrapper for the sandwich that

they had for lunch while they were doing the work.

Now, when you have a good coverup you have to have some good perjury, right? You have got to have somebody who is going to perjure himself. Now, Joseph Scansaroli left Peat, Marwick, Mitchell, went to work for National Student Marketing Company for a while. They moved to Chicago. He decided not to go with them. He had just married. He stayed on in Washington. About a year or so later he receives word that the Securities and Exchange Commission wants to talk to him, wants to take his testimony under oath concerning the work that he did while he worked for Peat, Marwick, Mitchell.

Well, he did what any good coverupper would do. Without a lawyer he marched in there and testified and told them what he did. They asked a question, he answered the question. He had a problem with the question, he came back the next time. No lawyer, no perjury. He told it like it was.

In order to have a good coverup, you have got to have, I am told, a scapegoat. You have to blame it on somebody. Everything that they did they will openly, freely acknowledge to you, hiding nothing.

Of course, the other famous word that has crept

into our language today, if you are having a good coverup you got to stonewall it, right? Well, when Kurek, who we will hear from, wanted to have some assistance from Peat, Marwick, Mitchell in presenting some material to the SEC in connection with their investigation you will hear that Natelli said to him, "Listen, you tellthem everything but we're not doing anything. I want the SEC to know all the facts and then we'll help you."

Coverup?

And the biggest laugh to me -- and I don't mean to be facetious about this -- is that they scratched out, scratched out from this financial statement. Now, when I listened to that I said, "My God, what they did is they obliterated it." No 18-minute gaps here, ladies and gentlemen. None of that nonsense. They prepared a draft of this proxy statement. It had certain footnotes in it. That is how you get started. YOu have to start with something. That draft was circulated, was given out to 10 to 15 people outside this company, outside Peat, Marwick to look at, to study, to give comments about, to quarrel with, and it was after that the Mr. Natelli decided, after he talked to Scansaroli and they talked to Otkiss, they decided to make this change in the footnote.

And the scratched out version, by the way, was

not dumped in the wastepaper basket.

It was sealed up with all the other papers.

You will see one exhibit here taken from the Peat, Marwick papers which is the original version of that footnote with the pencil marks scratching it out.

Tear it up, throw it in the wastebasket, burn the copies?

No. Put it all inthe work papers and sealed it up for us to be able to look at together here inthe course of this trial.

End 5A

Now, finally, there will be more, but the last thing I want to talk about now in this coverup business is an event that happens after the proxy statement goes out. Mr. Velie is suggesting, if you remember, that these businessmen on the other side of the transaction were deceived and he talked about the so-called comfort letter.

Now, a comfort letter, ladies and gentlemen, the evidence will show, is a kind of traditional document in business transactions. Essentially what it is is that the other side of the transaction, the buyer, wants to be sure that what he agreed to buy a couple of months before is in the same condition now as it was when they signed the first papers. And so they go to the accountants and they say "Give us comfort. Please tell us whether or not the company today is the same way it was before."

And you will hear that in the experience of most auditors it almost never happens -- let me come at that again. What happens is in 99 per cent of the times is that the auditor gives comfort, "things look the same today as they looked then."

But what happened here was that these accountants decided after looking at the documents and looking at the numbers that the original numbers were not right. And so they wrote a document that is not a comfort letter, a document that

said to the people on the other side of the transaction, "Wait a minute fellows. Look, we have checked those numbers out again and we can tell you based on what we have learned since then, they are not accurate, that rather than this company having a profit at that earlier date they had no profit," and you will hear how these coverupers told the people to the transaction, "Look, we think you should consider taking this information to your stockholders, we think you should consider giving these people, your stockholders, a chance to change their minds based on this new information," and you will hear that these businessmen decided that they should not do that.

Joe Scansaroli's fault? Tony Natelli's fault? For a judgment by these people who are not in this courtroom? Maybe some of them will be witnesses, but they are not sitting here fighting for their lives, I can tell you that.

Cortes W. Randall, is the President of National Student Marketing Corporation, and you will hear that he is quite a fellow. You will hear that he in a sense singlehandedly was building this business.

Now, Mr. Velie said that Cortes Randall was unscrupulous. Cortes Randall is a confessed criminal. Cortes Randall stood before Judge Tyler and told Judge Tyler that

he intentionall set out to defraud Natelli and Scansaroli.

Bernard Kurek. Mr. Velie talked about Kurek as an accomplice, one who works with someone else in a crime. He wasn't working with us. Bernard Kurek was Cortes Randall's man. And you will hear evidence to establish the promise that I am making to you. You look at the documents and you decide for yourself whose accomplice was Bernie Kurek. You decide for yourself how Bernie Kurek worked with Cort Randall to accomplish their common end.

Look for Bernie Kurek's motive. He hasn't been sentenced yet. Look for his financial motive. Analyze the man. Decide whether or not you would rely upon what he is saying now.

Ladies and gentlemen, you are being asked to do wha I think is a most difficult task. It is to make a judgment about the conduct of another human being. And I will be the first to say that the background of a human being is no excuse for misconduct.

On the other hand, you can't look at people in a vaccum. You want to know who is he, where did he come from, what kind of stuff is he made of.

Listen for the evidence that shows that Joe Scansaroli, born in a small mining town in Pennsylvania, served his country in the armed forces, became an accountant, came

to the big city to practice accounting. Listen to the people who worked with him at the time, the accountants at Peat, Marwick, the accountants at National Student Marketing Company. Listen to the kind of judgments you get about this man from these people.

Frank Velie has suggested that this is an important case to Joe Scansaroli because it is a criminal case. This is an important case to Joeseph Scansaroli because it is all on the line for him here, is reputation, his profession, and potentially his freedom. But believe it or not, ladies and gentlemen, I truly fee that Joseph Scansaroli has no fear. Apprehensive, yes, but no fear, because I know that he is confident when all the evidence is in you will be satisfied beyond any doubt that he is not guilty of the crime charged in this indictment.

Thank you.

THE COURT: Ladies and gentlemen of the jury, I am obliged to ask you to take another brief recess at this point. The jury in the other case that I told you I was taking over for one of our ill judges, is reaching a verdict or has reached a verdict.

I am going upstairs to take the verdict. I shant be long. I will return and we will come back in this case. We will start hearing testimony from the first Government

witness.

Take about a five-minute recess.

(Recess.)

(In open court, jury present.)

THE COURT: Mr. Velie.

MR. VELIE: Your Honor, the Government calls Bernard Kurek.

xx B E R N A R D J. K U R E K, called as a witness by the Government, having been first duly sworn by the Clerk of the Court, testified as follows:

xx DIRECT EXAMINATION

BY MR. VELIE:

MR. VELIE: May I proceed, your Honor?

THE COURT: Yes.

Q Mr. Kurek, you are, aren't you, the Bernard J. Kurek who is indicted in Indictment 74-Cr 43, the indictment at issue in this case, is that correct?

A That is correct.

Q Sir, you have previously pleaded guilty to count two of that indictment, is that correct?

A That's correct.

Q For the information of the jury, that is the count which charges preparation of a false statement or false statements in a proxy statement for National Student Marketing?

A That's right.

Q Sir, would you please tell the jury, do you have

some professional training, background training?

A Yes, I have an associates degree in business administration from Benjamin Franklin University.

Q Training in what field is it?

A In accounting.

Q Are you a certified public accountant?

A No, I am not.

Q Did there come a time, sir, when you were employed at National Student Marketing Corporation?

A Yes.

Q When was that?

A I was employed in the middle of June of 1968.

Q When did your employment terminate?

A It terminated at the end of April 1970.

Q During that period of time, would you please tell us what position or positions you held?

A I was hired as controller of the company and later promoted to vice president of finance and treasurer.

Q In layman's terms, just so we understand, what was your function in all those titles?

A My function was to oversee the financial affairs of the company.

Q Were there outside accounts during a substantially larger portion of that period that you also dealt with?

A Yes, there were.

Q Who were the outside accountants for National Student Marketing?

A The outside accounting firm was the firm of Peat, Marwick, Mitchell and Company.

Q Any particular office of Peat, Marwick & Mitchell Company?

A Their Washington office, primarily.

Q During that period of time, whom primarily was responsible from Peat, Marwick, Mitchell for National Student Marketing Affairs?

A Mr. Natelli and Mr. Scansaroli.

Q Do you see Mr. Natelli here in the courtroom?

MR. MARTIN: We will concede the identification, your Honor.

MR. STILLMAN: They know each other.

Q Do you see Mr. Scansaroli as well?

A Yes.

MR. STILLMAN: I think he knows him too.

MR. VELIE: The record should reflect that counsel have conceded identification by Mr. Kurek of the defendants Natelli and Scansaroli.

Q Would you please tell the jury when you first met Mr. Natelli?

A Yes, it was sometime during about the third week of August 1968.

Q Would you please tell the jury what the circumstances of that meeting were, that is, if it was a meeting, where it was and when it was and who was present?

A Well, I was introduced to Mr. Natelli in Mr. Randall's office in Washington. Present in the office when I met them were Mr. Randell, Cortes Randall, the President of the company, his father, Mr. Natelli and a partner from Peat, Marwick's Kansas City office, whose name I don't remember.

Q All right.

What is your recollection of the conversation to which you were a party at that time?

A Well, I was invited into the meeting. These people were in the room at the time. It was explained to me by Mr. Randall that the company was thinking about changing accounting firms and were discussing that matter with Peat, Marwick and Mitchell and Mr. Natelli was with the Washington Office of Peat, Marwick and Mitchell.

Q Forgive me if I have overlooked this. Did you fix the time of that meeting, the date of that meeting?

A Yes, it was sometime during the third week of August of 1968.

Q Just a piece of background information for the jury.

Would you please tell the jury what the fiscal year for National Student Marketing was?

A National Student Marketing's fiscal year ended on August 31.

Q Of each year?

A Of each year.

Q In that case when did the first quarter of each year end?

A The first quarter ended on November 31 or 30.

Q Second quarter?

A February 28.

Q Third quarter?

A May 31.

Q Of course, the year ended, as you have said, end of August, is that correct?

A That's right.

Q Did you subsequently learn that Peat, Marwick & Mitchell would, in fact, be the auditors for National Student Marketing?

A Yes, I did.

Q After the engagement of Peat, Marwick & Mitchell, did you have occasion to meet with Mr. Natelli and Mr. Scansaroli?

A Yes, I did.

Q Can you tell the jury, please, where that was, approximately when it was?

A Well, it was either August 26 or 27 of 1968, and we had an early morning meeting in my office in Washington. I think we met about eight o'clock in the morning.

MR. VELIE: Your Honor, we have premarked the exhibits. Counsel have a copy. This is Exhibit 27 for identification.

Q Mr. Kurek, would you be good enough to look at Exhibit 27 and tell us if you can identify it?

A Yes. It is my appointment book for the year '68.

Q I thinkyou said that the meeting you are about to tell us about was on the 26th or the 27th of August.

Would you please refer to your appointment calend and see if there is any entry there that refreshes your recollection as to when that meeting was?

MR. STILLMAN: I object, your Honor. He hasn't said that his recollection needs refreshing and the document is not in evidence.

THE COURT: I certainly agree with you on both points. I don't think he says he needs to be refreshed.

MR. VELIE: Very well.

Q Can you remember without looking at a calendar, unaided, whether it was the 26th or 27th of August?

A Yes, it was the 27th.

Q Very well. You may set the calendar aside, please. If you feel the need of refreshing your recollection by that or any other exhibit, please speak up and we will see if it is appropriate to show it to you at that time.

A Okay.

Q Very well. Your best recollection of the matter is that this was on the 27th of August 1968?

A Yes.

Q Incidentally, have you had occasion in preparing to testify to look at that calendar?

A Yes, I have.

Q Very well. And other exhibits as well?

A Yes.

Q Who was present at the meeting on the 27th of August?

A Present at the meeting were Messrs. Natelli, Scansaroli, Bill Chapman who was a staff account for NSMC at the time, and myself.

Q Would you please tell the jury your recollection of the substance of the conversation that took place at that time?

MR. STILLMAN: It seems to me, your Honor, we should first find out if he could attribute words to anybody--

THE COURT: In due time, I assure you.

Let's go ahead.

Q Do you think you can answer the question, Mr. Kurek?

A Yes. I primarily did the talking in the meeting. It was our first meeting after their being retained as auditors, and we explained to Mr. Natelli and Mr. Scansaroli that both Bill Chapman and I had only been there a couple of months, and during that time we had spent most of our time trying to get together the material to prepare the May 31, 1968 quarterly statements and at this time, which was August 27, the records were a month or two months behind and that most of what we had run into was in real bad shape, to the extent that we even had to dump files out and refile material to find things around there.

I spoke about commitments and the type of account--

ing that had taken place during the third quarter, and the remark or the comment that I remember was either Mr. Natelli or Mr. Scansaroli saying that they had been involved in audits of other companies whose records weren't in the best of shape.

That was sort of the end of the meeting, as I remember.

Q You mentioned in passing that you spoke to them about the method of accounting.

Do you recall what it was in substance that you said to Mr. Natelli and Mr. Scansaroli about the method of accounting?

A Well --

Q Give us your best recollection.

A Yes. The point that I was trying to bring out to them was the way in which contracts or commitments had been accounted for during the --

MR. MARTIN: I object, your Honor. It seems to me he is telling us the operation of his mind.

THE COURT: We will try to find out.

Mr. Kurek, tell us, if you will, as best you recall what you said to these people at this meeting about that subject.

THE WITNESS: I told them that subsequent to May

31 it was learned that certain commitments had not been reported and some time during the month of July this material had been collected and accounted for and included in the statements for the nine months ending May 31, 1968.

Q Did you disclose to them what that method of accounting was called or was known as around National Student Marketing Corporation?

A I can't specifically recall whether I did or didn't.

Q Let me just askyou this: Is that what at times is called contracts and progress accounting?

A Yes, it is.

Q You explained these facts to Mr. Natelli and Mr. Scansaroli?

A As I best remember, I did.

Q Fine. Do you happen to recall telling them the relative amounts or the size of the commitments that had been accounted for in the fashion you have just said?

A No, I don't recall whether I did.

End B

Q In fact, do you have any knowledge of the approximate size of those commitments booked in the third quarter of 1968?

A As I can best remember, they were probably inthe $25,000 to $50,000 category, that area.

Q A total of between 25 and $50,000, grand total?

A That's right.

Q That is your recollection?

A That is my best recollection.

Q Now, sir, did Mr. Natelli and Mr.Scansaroli have any function whatever with respect to the 1968 audit of NationalStudent Marketing?

A Yes, they did.

Q Would you tell us, please, what Mr. Natelli's function was?

A As I understood it, Mr. Natelli was the partner in charge of the Washington office and the partner responsible for the National Student Marketing account.

Q Did he have a specific responsibility with respect to the audit, as you understood it?

A Yes.

Q What was that?

A Mr. Natelli's?

Q Yes.

A He was the partner in charge of the account and the audit.

Q And Mr. Scansaroli's function, did you have an understanding of what that was?

A Yes. I understood Mr. Scansaroli to be a supervisor and he was the supervisor of the National Student Marketing account.

Q During the course of the audit did you have occasion to prepare any schedules showing approximate profit or loss for National Student Marketing as reflected in its own books?

A Yes, I did.

Q Mr. Kurek, I show you Government Exhibit 1 for identification and askyou if you are able to identify it.

A Yes.

Q What is it?

A This is the schedule that you just mentioned.

Q Did you prepare it?

A Yes, I did.

MR. VELIE: I will offer it at this time.

MR. STILLMAN: May I just glance at the original, Mr. Velie.

(Pause.)

MR. STILLMAN: Your Honor, just a little house-

keeping error that we are wrapping up. Just bear with us for one minute.

MR. VELIE: I have offered the document.

MR. STILLMAN: May I?

MR. VELIE: You still need it?

MR. STILLMAN: Just one second.

May I inquire, your Honor, of the witness on the voir dire?

THE COURT: Yes.

MR. STILLMAN: Thank you.

MR. VALIE: Do I understand that there is an objection to this document?

THE COURT: I really don't know. But I wish we would move along.

MR.VELIE: If there isn't I would like to continue my examination.

THE COURT: He apparently wishes to ask something before deciding whether or not to object.

MR. STILLMAN: Precisely.

THE COURT: Will you please move along.

MR. STILLMAN: Thank you, your Honor.

VOIR DIRE EXAMINATION

BY MR. STILLMAN:

Q Mr. Kurek, this piece of paper, Government Exhibit 1 for identification, is that all in your handwriting?

A Yes, it is.

Q And was it part of your duty as the chief financial officer of this company to make records of this kind?

A Yes.

Q That is what you got paid to do, in other words, at times to prepare schedules of this type?

A Yes, sir.

MR. STILLMAN: Thank you. I have no objection to it, your Honor.

MR. VELIE: Mr. Martin, do you object?

MR. MARTIN: No objection.

xxx (Government Exhibit 1 was received in evidence.)

MR. VELIE: Your Honor, would you like to examine a copy?

THE COURT: I take it there are no copies.

MR. VELIE: I have an extra copy for the Court.

THE COURT: Do you gentlemen have a copy of this?

MR. VELIE: Apparently --

MR. MARTIN: Apparently we got a wrong copy, your Honor. We can correct it afterwards.

THE COURT: Then let me disgorge and deliver it to you at the back table.

MR.MARTIN: Thank you, your Honor.

MR. VELIE: At this time, your Honor, I would like to read a portion of this to the jury. Reading from the exact bottom line, "Estimated annual loss $232,198."

BY MR. VELIE:

Q Mr.Kurek, what is the date of this document?

A October 2, 1968.

Q When you prepared it did you prepare it with the best information available to you as of October 2 from the books and records of NationalStudent Marketing?

MR. STILLMAN: Objection.

A Yes, sir.

Q Mr. Kurek, when a lawyer gets up to object, please wait for himto state his objection.

THE COURT: The objection is overruled.

Q Your answer is yes, you did prepare it from the best records then available?

A That is correct.

Q Am I right in saying that that bottom line shows a loss of $232,000-some odd for National Student Marketing as of its own books and records?

A Yes.

Q On October 2?

A Right.

Q 1968?

A That's right.

Q How long after the year end August 31 was this October 2?

A It is approximately a month and a few days.

Q Did you have occasion to discuss that $232,000 loss with anybody?

A Yes, I did.

Q With whom?

A I presented the document to Mr. Randall and showed him that there was --

MR. STILLMAN: Excuse me.

MR. MARTIN: Objection, your Honor.

MR.STILIMAN: I object to any conversation between him and Mr. Randall.

MR. MARTIN: Same objection.

THE COURT: Do you want to get into conversations with Mr. Randall?

MR. VELIE: Your Honor, I have two theories for offering it.

THE COURT: No, no. Forget the theories. I didn't askyou that.

Do you in fact wish to elicit the conversations?

MR. VELIE: I would like to put this before

the jury, yes, your Honor.

THE COURT: I am going to take this subject to connection only. Certainly at this early stage, why, I can understand the defendants' position, but I will take it subject to connection.

MR. MARTIN: Your Honor, I would like to be heard on that because this is October of 1968, your Honor.

THE COURT: I heard the same date, but I make the same ruling.

Go ahead.

MR. STILLMAN: Your Honor, forgive me, but I would appreciate then if you would please explain to the jury at this preliminary point what this idea of subject to connection is.

THE COURT: I will explain it at a later point, but not now.

MR. STILLMAN: Thank you.

THE COURT: Go ahead.

Q Incidentally, Mr. Kurek, to jump ahead just a tiny bit, was the subject matter of your conversation with Mr. Randall also part of a conversation with Mr. Randall also part of a conversation with Mr. Natelli?

MR. STILLMAN: Objection, leading.

THE COURT: Yes. Sustained. In any event, Mr.

Velie, one thing at a time, from your own viewpoint, make a great deal of sense.

Now let's go back.

MR. VELIE: Thank you.

Q Tell us what your conversation with Mr. Randall was and you prepared that.

A Well, I showed it to him and he says "It's not right, it's not correct. The company hasn't sustained a loss. There is financial information that you don't have."

Q Were there further conversations along this line with anybody?

A Yes, there were.

Q With whom?

A There was a meeting in which Mr. Randall met with me, Mr. Natelli and Mr. Scansaroli, saying that various account executives had contracts or commitments for which the accounting department did not have the information and that if that material were in the accounting department there wasn't a loss.

MR. STILL: I wonder if we could fix a time, your Honor, for this meeting.

THE COURT: Yes.

Mr. Kurek, though Mr. Velie didn't ask you this, and therefore you didn't answer it, could I ask you.

This was a meeting. Are we to understand that it came some time after October 2nd?

THE WITNESS: Yes, sir.

THE COURT: Could you fix a date for us, please?

THE WITNESS: Yes. That meeting was on October 11th or October 12th.

THE COURT: In Washington?

THE WITNESS: In Washington, 1968.

THE COURT: In Randall's office?

THE WITNESS: Yes, sir.

THE COURT: Thank you.

--

Q Do you recall if Mr. Natelli or Mr. Scansaroli made a response when Mr. Randall told them this information?

A I can't remember which of them made a response or whether there was a response.

MR. VELIE: Your Honor, the clock shows seven minutes after the hour. I am about to launch into an exhibit which should take us about thirty minutes or 40 minutes to go through.

Did you want to break at 4:15? If so, this is a good place for me to break personally.

THE COURT: Yes, I do. I have another case coming at 4:15.

In any event, if you want to get Mr. Kurek to identify this so that counsel at the back table know what you are doing, it might save some time.

MR. VELIE: Very well. Exhibit 2, gentlemen.

Q Mr. Kurek, I show you Government's Exhibit 2 for identification and ask you, sir, can you identify that?

A Yes, sir.

Q Would you please tell the jury what it is.

A It is a file which contains various material regarding ~~the~~ commitments that were booked as of August 1968.

Q When you say as of, are these the commitments you

have mentioned once already in terms of your talking to Mr. Randall and Mr. Randall talking to Mr. Natelli and Scansaroli? Are these the commitments you are talking about when you say commitments?

A These are the commitments that were gathered subsequent to that meeting.

Q Did you prepare that file?

A I don't know whether I personally prepared it.

Q Was it prepared in your accounting department at National Student Marketing under your supervision?

A Yes, it was.

Q Have you had occasionto look at it and see whether it appears to be complete as it was when it was prepared and assembled back in October of 1968?

A Yes, I have.

Q Is it complete?

A It appears to be complete.

MR. VELIE: I will offer it.

THE COURT: Any objection, gentlemen?

MR. STILLMAN: Just one or two questions, your Honor.

--

xx VOIR DIRE EXAMINATION

BY MR. STILLMAN:

Q What was the date, Mr. Kurek, you say this file

was put together?

A I didn't say a date.

Q Approximately when was it put together?

A It was put together somewhere between the middle to latter partof October 1968.

Q In putting it together, did you get any documents from Mr. Scansaroli?

A Yes.

Q And you put that intoyour file, right?

A That's right.

Q Indeed, thos top document right in there, is a document that apparently has his initials on it, correct?

A That's correct.

MR. VELIE: Your Honor, there does not appear to be any objection to this. Counsel have had it for some time. I believe it is improper voir dire.

MR. STILLMAN: I get paid to ask questions, Mr. Velie.

THE COURT: Gentlemen, please. Do you have any further questions?

MR. STILLMAN: Yes, your Honor.

THE COURT: Could we move along.

MR. STILLMAN: I am trying to, but he objected.

Q This schedule here that I am now looking at, is

that one that was prepared internally?

A Yes, sir.

Q The same as to this one, sir?

A Yes.

Q Was that prepared by you, this one that we are looking at now, which is contracts in progress?

A The heading is mine, but the writing throughout the body of it is not.

Q Whose writing is that, sir?

A It appears to me to be Bill Chapman's.

Q This other schedule -- I am sorry, sir, just let me go back -- this schedule here, is that prepared in your writing?

A Yes, it is.

Q That is a schedule that says, "Schedule of Contracts to be booked as of 8-31-68", correct?

A That's right.

Q Just one last question, Mr. Kurek.

Did you assist Mr. Chapman in pulling together the documents that are contained in Government Exhibit 2 for identification?

A Yes, or we assisted each other, whichever way you want to put it.

Q You and he were working together on it?

A Working together on it, that's right.

MR. STILLMAN: I have no objection to it, your Honor.

MR. MARTIN: Nor do I.

THE COURT: All right.

The document will be received. You want to read portions of that to the jury, Mr. Velie?

MR. VELIE: No, your Honor. I believe this is a good breaking point right here.

THE COURT: All right.

Ladies and gentlemen, we will break for the day at this point, as you just heard, and tomorrow morning I am happy to report that I am free and clear of other cases and we will start at the usual time of 10 o'clock. See you then.

Yes, sir. Oh, yes. You wanted to raise the question of holidays, Mr. Light.

JUROR NO. 1: Yes.

THE COURT: I did hear about that. I am glad you flaged my attention.

It is true, as I understand it, that next Monday, ladies and gentlemen, is a Federal holiday. There are holidays and holidays these days, and I emphasize that word. This Court is observing generally that day as a holiday

and if any of you would like to take the holiday, why, I say we will take the holiday. Are there some of you who would like to take Monday as a holiday?

Don't be embarrassed. There may be others that do too. Everybody is speechless.

JUROR NO. 10: I had expected before I was on this case that I would have that day off from work. I have made plans.

THE COURT: If you want to keep those plans -- it is a national holiday by vote of the United States Congress -- I would be perfectly glad to let you keep those commitments.

JUROR NO. 8: Your Honor, if we are off Monday what will happen to Friday?

THE COURT: This Friday or a week from Friday?

JUROR NO. 1: A week from Friday.

JUROR NO. 8: Monday is Veterans Day, right?

THE COURT: Correct.

JUROR NO. 8: What about that Friday?

THE COURT: I really don't know. I believe that I may have some other cases, but I am honestly not sure.

But I will tell you. Why don't you take off Monday, as I think some of you would like, and that is perfectly clear, and maybe I can clear the decks of my other cases on the following Friday and we can use that Friday to

jhe 7

make up the time. Let me see about that.

To answer your question, we will observe Monday, Veterans Day, as a holiday.

JUROR NO. 1: What about Election Day?

THE COURT: Mr. Light, I would like to pass that question now, for two reasons: One, who knows, maybe we will make better progress than we think.

Number 2, that is not a full holiday by law and I would like to get a little more feel of how we are going before I answer you. I have it on my mind, thanks to you reminding me, and I will try to discuss that with you next week.

Is that all right?

JUROR NO:1: Perfect.

THE COURT: All right. You are very nice. I will see you tomorrow morning promptly at 10.

(Adjourned to 10 a.m., October 23, 1974.)

UNITED STATES OF AMERICA

vs. 74 Cr. 43

ANTHONY M. NATELLI and
JOSEPH SCANSAROLI

October 23, 1974
10:10 a.m.

(Trial resumed.)

(In open court, jury present.)

xx BERNARD J. KUREK, resumed.

THE COURT: We had a little trouble assemblying everybody, but now we are ready.

Mr. Velie.

MR. VELIE: Thank you, your Honor.

xx DIRECT EXAMINATION (Continued)

BY MR. VELIE:

Q Mr. Kurek, when you were testifying yesterday evening, you gave us some information about the size of the contracts in progress as of the nine-month period in 1968.

As I recall it -- correct me if I am wrong -- it was something under $50,000, is the that correct?

A That's correct.

Q Have you had occasion since you testified last evening to look at the actual papers from that period to refresh your recollection as to the size of those contracts

in progress?

A Yes, I have.

Q With your recollection refreshed, would you please tell the jury what the size of the contracts in progress was as of the May period of 1968?

A I reviewed copies of the work papers for that period and the gross amount of the commitments was about 260,000 and profitability of about 146,000 was reflected rather than the 25 to 50,000 that I indicated yesterday.

Q So it is somewhat larger than what you said yesterday, is that correct?

A Yes.

Q Incidentally, you say profitability. Tell me, that means, doesn't it, in simple terms, the gross profit, that is, the amount that the company is going to receive, minus any costs that are carried, is that correct?

A That's right.

Q And it is gross because it is not corrected for tax, is that correct?

A True.

Q When we left off last evening you were telling us about Exhibit 2 in evidence, Government's Exhibit 2 in evidence, the file of materials you collected with respect to commitments in October, is that correct?

A That's correct.

Q Now, sir, I am going to give you Government's Exhibit 2 in evidence and Government's Exhibit 27 for identification, which you identified as your calendar for 1968.

Are there entries in Exhibit 2, your file, and in Exhibit 27, which establish what the date was of the conversation you told us about last evening, and I refer specifically to the conversation between Mr. Randall, yourself, Mr. Natelli and Mr. Scansaroli, in which Mr. Randall said, in effect, "There are contracts out there and we don't have a record for them."

A Yes.

My diary indicates that it was October 11, 1968.

Q Are there indications in your file, Exhibit 2, that also show that to be the date?

A Yes, there are.

Q Would you tell me, tell the jury, what they are?

A Well, there is a copy of some telexes of that date asking for the information regarding commitments that we did not have as of that time.

Q After you had the conversation, you told us about with Mr. Randall and with Mr. Natelli and Mr. Scansaroli, did you perform some function with respect to finding information about these so-called commitments?

A Yes, I did.

MR. MARTIN: Objection to the characterization, your Honor.

Q With respect to the commitments you had been told about.

A Yes, I did.

Q What did you do?

A Well, I got on the phone and called various accoun executives or salesmen within the company, or the key ones, to see what commitments or contracts that they had which we didn't have the information for in the accounting department.

Q Are there notes or memoranda or telexes in your file that indicate that?

A Yes, there are notes, handwritten notes of my telephone conversations. There is one here for October 12, and another one here recording a conversation of October 14 with another account executive and there is a typed memorandum here dated October 11 regarding another telephone conversation. So October 11th and, you know, thereafter I had these -- started gathering information.

Q What did you do with the information you gathered?

A Copies of the telephone conversations are here in the file.

Q Other information that you gathered, to the extent that it was reducible to writing, would you put it in the file?

A Yes, I did.

Q Mr. Kurek, there are also certain forms in Exhibit 2. I have opened the exhibit to one of the forms I am

interested in having you talk about.

Did you have some part in designing that form?

A Yes, I did.

Q Did anybody help you?

A Yes. I believe it was a collective effort of Mr.Scansaroli, Mr. Chapman and myself.

Q What was the purpose of designing a form such as the one that is open before you now?

A Well, the purpose of the form was to design one in which we could fill in or have the account executives fill in the information that the accounting department would need in order to account for these contracts or commitments.

Q When you say account executives you are referring to what we call salesmen, is that the idea?

A Yes.

MR. STILLMAN: He calls them account executives, your Honor. I object to the leading question.

THE COURT: I don't think it is really leading. It is a clarification which I will allow. Go on.

Q Is that what most of us would refer to as a salesman?

A Yes, it is.

Q A salesman of NationalStudent Marketing Services?

A Yes.

MR. VELIE: With the Court's permission, I am going to read the entries onthe form to the jury.

MR. STILLMAN: You are reading from one of the printed forms, I gather?

MR. VELIE: That is right. At the top it says NSMC memorandum. There is a line for a date, a line for client's name, a line for client's address, a line for contracting officer.

Q Mr. Kurek, what is a contracting officer, your understanding of what a contracting officer is?

A My understanding was that was the person with the company that we were getting the contract with, that was the person responsible for the commitment.

Q In other words, when you say client up here, client's name and client's address, that is the client of National Student Marketing?

A That is right, that is the company.

Q The contracting officer is the person who is responsible from the client?

A That's right.

Q There is a line here for advertising agency, client's advertising agency.

That is what it refers to?

A Yes.

Q There is a line, several lines for description of program. It says next to it "program to take place."

What does that refer to?

A The line that says "Program to take place" refers to the period in which the services by National Student Marketing were to be performed.

Q In the future?

A Correct.

Q Then there is a line that says "NSMC" -- that is National Student Marketing Corporation, of course, is that right?

A That's right.

End 1B

Q "NSMC gross revenue," and a line for a dollar figure, is that correct?

A That is correct.

Q Under it "NSMC costs," several lines, "printing, layout, product cost, travel and other," is that correct?

A That is correct.

Q And a line to total it?

A That is correct.

Q Underneath that "NSMC net profit." I believe you have already explained to us net profit, or have you? Is that a subtraction --

A It is the difference between the gross amount of that commitment and the total of those costs that are to be incurred. That would be the gross profit.

Q There is an entry down here that says, "Client's commitment," three to choose from, it appears to me, is that correct, verbal, letter of commitment attached or contract signed?

A That is correct.

Q The idea is that the salesmen --

MR. MARTIN: I object to the leading. I think it is a bad habit to get into.

THE COURT: I couldn't understand you.

MR. MARTIN: I object to the leading, your Honor.

MR. VELIE: I will rephrase it.

THE COURT: He says he is going to rephrase it.

Q Would you please tell me why there are three lines, verbal, letter of commitment or contract underneath client's commitment?

A Three lines are there because -- to indicate to the accounting department what type of commitment it was. If it was a verbal commitment we could then later follow up to try to get written information on it. If it was a letter of commitment or a signed contract, we tried to get material to support this form at that time. That is the purpose of those three lines.

Q All right. Then there is a line and next to it it says, "Sign."

Is that the signature line for the salesman?

A That is correct.

MR. STILLMAN: I think you left one of the lines out.

Q There is another that says, apparently, projection The "ion" has been crossed out. Project is blank percentage complete.

Would you explain that to the jury?

A That line was in there for the salesman to estimate what percentage he estimated that project to be

complete or that contract.

Q Was there any discussion as to how the percentage of completion was to be estimated, that you recall?

MR. MARTIN: Objection, your Honor. I would like to know who we are talking about having a conversation with.

THE COURT: I agree. Rephrase that, projection could mean most anything.

Q The line that says project is blank percentage complete, was there an understanding reached at National Student Marketing or between you and the accountants as to how that was to be computed? You may answer this question yes or no. Do you recall that?

A No, I don't recall the specifics of that.

Q Very well.

Following designing of the form, were certain of them printed up?

A I didn't hear you?

Q Did you have several of these forms printed up in blank?

A Yes, I believe they were xeroxed.

Q Did you have occasion to do anything with them after they were xeroxed?

A Yes, I did.

Q Please tell the jury what it was that you did.

A On October 17 and October 18, 1968, Bill Chapman, who I said yesterday was the staff accountant with National Student Marketing Corporation, and I came from Washington -- went fromWashington to New York and went around to the various salesmen to have them either put the information on there or we recorded the informationthat they gave us, and tried to have them sign the forms supporting the commitment.

MR. VELIE: For clarity, within Exhibit 2 I am going to ask that the bottom-most schedule undated be marked Exhibit 2A for identification.

MR. MARTIN: May I suggest at the break we simply numerically paginate all of these so we have some idea of what we are referring to.

THE COURT: I would think that would be better. To say 2A for identification is really somewhat confusing. The document is already in evidence.

MR. VELIE: Very well, your Honor.

2A

Q I will show you what is the lower-most within this file, I believe it is, schedule, and ask you to describe what that is to the jury, please.

MR. STILLMAN: I am sorry. I hate to be a pest.

I would like to know what it is the witness is looking at so I can follow along.

May I go up and take a look?

(Pause.)

MR. STILLMAN: Thank you.

Q Would you please tell the jury what this is?

A This schedule is a summary of the date that we selected on October 17 and 18 on the forms that was just described to the jury.

Q Who actually filled out that summary schedule?

A This form here was filled out by Bill Chapman.

Q All right.

Does it record certain commitments?

A Yes, it does.

Q Do you see on there an entry for Clairol Company?

A Yes, I do.

Q What is the gross amount of the Clairol Commitment?

A $500,000.

Q Just to make sure we have this, this is a commitment from Clairol, is it not, to spend $500,000 with National

Student Marketing on National Student Marketing services?

A That's correct.

Q What is the gross profit indicated there on the Clairol contract on that form, summary?

A $150,000.

MR. STILLMAN: Is that the line that says estimated net profit?

Q Is that the line that says estimated net profit?

A Yes, it is the column.

Q All right.

What is the back up in your file there for that entry on the form?

A The back up is that NSMC memorandum form that we were just discussing that's dated October 17. It is typed in with the information and signed by the salesman.

Q So the form is dated October 17, 1968?

A Yes, it is.

Q Signed by the salesman?

A Yes.

Q What's his name?

A Ron Michaels.

Q Is that a written contract, a letter of commitment or is it verbal?

A The form indicates that it was a verbal commit-

ment.

Q Now, sir, was there available to you at the time this information was received or thereafter, a contract from the Clairol Company with National Student Marketing ~~forms~~ for its ~~and~~ services?

A No, there wasn't.

Q Was there any letter at all?

A Not that I know of.

Q Did you know of any correspondence of any kind with the Clairol Company available to put in that file?

A No, I didn't.

Q As Chief Accounting Officer for National Student Marketing, were you aware of any entries or expenditures reflected in entries anywhere showing that National Student Marketing had spent any money whatever doing something for Clairol the preceding August or before?

A No, I was not.

Q There were no such entries?

MR. MARTIN: I object to Mr. Velie's summation during his direct examination.

THE COURT: I certainly agree that the last question was only a repetition of the first question. So we will disregard the second one and go on.

MR. VELIE: Very well.

Q Would you look back at the schedule, please.

Do you see contracts there for a salesman by the name of Ganis?

A Yes, I do.

Q Would you tell the jury the name of the clients Mr. Ganis was talking about and the amounts of the commitments Mr. Ganis had reported?

A There's one for Gossard for $56,250, Chicken Delight for $160,875, Cheeseborough Ponds for $30,000, DuPont for $70,000 and Faberge for $56,250.

Q Are there backup forms of the kind you described to us earlier with respect to Mr. Ganis' commitments?

A There are forms in here.

Q All right.

Are those forms signed by Mr. Ganis?

A No, they were not.

Q Could you tell by looking at them who filled them out?

Do you recognize the writing?

A Yes, I recognize it as Mr. Chapman's writing.

Q Were there any written contracts with respect to these available that you could put in your file, these commitments?

A No.

Q Were there any communications from any of these companies, letters back and forth, to National Student Marketing available to put in your file?

A Not that I was aware of.

Q Were you aware as Chief Accounting Officer of any record of any monies spent by National Student Marketing to perform any services for any of these companies in August or before of 1968?

A No, I was not.

Q Or at any time, for that matter?

A No.

Q Would you look at the second filled out schedule, the one that is a little above that in the file.

Incidentally, from that first schedule, are you able to tell the jury approximately when that was prepared?

A Well, the information wasn't gathered in New York until October the 17th or 18th. The schedule is not dated, but it couldn't have been completed before then. It had to be 17, 18 or subsequent to that.

Q Do you have a second schedule you are looking at?

A Yes, I do.

Q Do you see a commitment listed on that summary schedule for a company called Cheesborough Ponds?

A Yes, I do.

Q What is the gross amount of that?

A $100,000.

Q Who is the account executive?

A Ron Michaels.

Q Is that the same Ron Michaels who had the Clairol commitment?

MR. STILLMAN: Excuse me. I have what I would call a point of clarification.

Have we moved on to another schedule now?

MR. VELIE: Yes.

MR. STILLMAN: All right.

MR. VELIE: I am sorry.

Q That is the same Ron Michaels who had the Clairol commitment for $500,000, is that correct?

A Yes, it is.

Q Is there a back up form?

A There is a form here.

Q Has that been signed by Mr. Michaels?

A No, it has not.

Q Can you tell by looking at the handwriting who filled it out?

A Mr. Chapman.

Q Is that dated?

A Yes, it is.

Q What is the date?

A It is October 22, 1968.

Q Was that Cheesborough Ponds commitment on the earlier schedule you told us about?

A No, it was not.

Q It is on the second schedule, is that the idea?

A Yes.

Q Are you able by this information, or any other information, to give us the approximate date of the second schedule?

A Well, the second schedule has certain of the first schedule commitments but in addition to that it has Cheesborough Ponds, which it appears the information wasn't known until on or about October 22.

So I would date the second schedule October 22 or subsequent to that.

Q Would you look at the top-most schedule, please. That is a Xerox, is that correct?

A Yes, it is.

Q Is that a Xerox that you had in your file when you prepared the file?

A Yes.

Q Can you tell from examining it who prepared the original of which that is a Xerox?

A Yes. It is signed by J. S. and it appears to me to be Mr. Scansaroli's schedule.

Q Incidentally, did Mr. Scansaroli have access to this file that we have been discussing?

A Yes.

MR. STILLMAN: I object to the form of that question, your Honor. I don't know what that means.

THE COURT: I am inclined to agree. You want to ask him if he knows whether he ever had the file or --

MR. VELIE: Very well.

Q Referring to Government Exhibit 2, the entire file that you have there, do you know if Mr. Scansaroli ever had that entire file or portions of it to look at or --

A To the best of my knowledge, he had portions of it if not all of it.

Q Very well.

During the time when he was working on the audit in what location was he working, Mr. Scansaroli?

A When he was at NSMC's office?

Q Did he work at NSMC's office?

A Yes, he did.

Q Now, sir, the commitments shown on that top schedule, were they entered into the books of National Student Marketing Corporation at any time?

A Yes, they were.

Q When was that? Can you give us a date on or

after?

A Well, I am sure it was after the date of this schedule, which is October 30, So it was either the last day of October or early November at earliest that they were entered.

Q When they were entered into the books of National Student Marketing were they entered as components of earnings of some particular year?

A Yes, they were.

Q What year?

A The year ended August 31, 1968.

Q That is, by my calculation, two months before, is that correct?

A That's right.

Q A simple question here. Would you define for us what the term book or booked means in terms of the kind of accounting we have been talking about here?

THE COURT: Excuse me. I don't follow that. Book or booked?

MR. VELIE: I will make it clearer.

Q Are you familiar with the term to book a contract?

A Yes, I am.

Q What does that mean in simple layman's language?

A In accounting terms it is to record the material

into the general ledger of the company.

Q At that point it becomes or does it become, available for people to look at and see it as a portion of the company's assets or earnings?

A Yes, it does.

Q Similarly, are you familiar with the term "write off"?

A Yes, I am.

Q What is that?

A To write off means to delete or -- delete from the records.

Q Subtract from the records?

A To take it out of the books.

Q Now, sir, did you have occasion to discuss with Mr. Natelli the final booking of these commitments, the commitments which are listed on the schedules in Exhibit 2?

A Yes, I did.

Q Can you fix the approximate time that that occurred?

A Yes. It had to be and it was in the latter part of October of 1968.

Q Where was it?

A Where?

Q Yes, sir.

A It was in the offices at NSMC, as I best remember.

Q Do you remember who was there?

A As far as I remember, it was just Mr. Natelli and myself.

Q Would you please tell us what was said by Mr. Natelli and yourself as you recall it at that time?

A Yes. Up until that time I think there had been some doubt as to whether --

MR. STILLMAN: I object to what he thinks, your Honor.

THE COURT: Yes.

MR. STILLMAN: It seems to me we are entitled to the conversation.

THE COURT: You don't have to belabor it.

MR. STILLMAN: I am sorry, Judge.

THE COURT: The question is not your thoughts, sir. The question is what was said by you and what was said by Natelli.

A I asked Mr. Natelli if these commitments were going to be recorded or booked and reflected in the 1968 statements in view of the fact that this is late October, this information had just been gathered, we had not done the work on the contracts, and without them there would be a loss.

He said, "Yes,"--Mr. Natelli said, "Yes, I think it is an appropriate way of accounting for the transactions

of the company. It is a young company and without it it could kill the company."

Q Would you take a look at that top schedule in Exhibit 2 and tell us the total amount of commitments booked, if you can?

A The total amount of the commitments was $1,740,000 or 741,000, in round figures.

Q These include the Clairol commitment, is that correct?

A Yes, sir.

Q Did it include Cheesborough Ponds commitment for $100,000?

A Yes.

Q Mr. Ganis' commitments?

A Yes.

Tk 3B jhb-1 Kurek-direct

Q I show you Government Exhibit 4D for identification. Can you identify what Exhibit 4D for identification is?

A Yes. It is the general ledger of National Student Marketing Corporation for the year ending August 31, 1968.

Q Are you able to locate in there entries booking income expense and profit with respect to the $1.7 million of commitments you have just told us about?

MR. STILLMAN: Preliminarily, your Honor, I am sure we will be able to go ahead,but I do object until Mr. Valie makes an offer of the document.

MR. VELIE: To ease Mr.Stillman's mind, rather than offer that very heavy document, I was going to offer the pages.

MR. STILLMAN: That is fair enough.

THE COURT: There is no unassailable rule written in stone that we have to get a book or record in evidence before we deal with some of its parts,gentlemen. Keep that in mind, please.

Let's go ahead. Apparently you want him to cull out the general ledger pages which reflect these so-called commitments and the entries dealing with these commitments.

MR. VELIE: Yes, your Honor, exactly.

Q Are you able to do that?

A You want me to pull them out?

Q No, it is not necessary to pull them out. Either clip them or make sure that the white papers are in the right place.

Incidentally, have you had occasion to go through this book before and look for the places?

A Yes, I have.

Q Would you check now and see if the markers are in the right places?

A Yes, they are.

MR. VELIE: Gentlemen, these pages are stencil-numbered and I will read you the numbers.

MR. STILLMAN: Thank you.

MR. VELIE: And I will offer those pages.

Stencil number 11361. The second is not stencil-numbered. I apologize. But it appears at account #454.

MR. STILLMAN: Is that the next succeeding page, Mr. Velie?

MR. VELIE: Yes. Incidentally, if I skip one please give me a hand.

11380 and the reverse of that page, 11384, and

the reverse of that page, 11386, 11387, 11388.

The Government offers those pages at this time, your Honor.

MR. STILLMAN: Let us look at them.

MR. VELIE: Yes, of course.

MR. MARTIN: No objection, your Honor.

MR. VELIE: To save time, your Honor, may we mark these at the recess, proceed with the witness?

xxx (Government Exhibits 4D1-7 received in evidence.)

Q Mr. Kurek, reading from the first of these, which I take it will be 4D1 in evidence, the line that says PMM AJE51-space 1,740,850, the figure I read, 1,740,000, is that dollars?

A That is dollars.

Q That is $1,740,850, is that right?

A That's correct.

Q What is PMM AJE51?

A That is a reference to Peat, Marwick & Mitchell's adjusting journal entry 51.

Q What does that mean? Are these entries based on an adjusting entry made by Peat, Marwick & Mitchell?

A Yes, it is.

Q That is entry #51 made by Peat, Marwick &

Mitchell, is that what you are telling us?

A That is correct.

Q Did you tell us what the gross profit on these commitments was?

A No, I didn't.

Q What is the gross profit on these commitments?

A Can I see that other folder?

Q Yes, of course.

THE COURT: Again, may I inject here and get a clarification. What do you mean, what is the gross profit on these?

Q Mr. Kurek, would you define for us what gross profit is?

THE COURT: No, I don't need a definition of gross profit. But keep in mind the testimony so far.

MR. VELIE: Yes, your Honor.

THE COURT: Is there some record, Mr. Kurek, which would show what purports to be a gross profit, do you mean using these forms and making the subtractions? It could be a variety of things, Mr. Velie. I don't purport to be a bookkeeper. Forgive me. But think of what the testimony has been. That needs clarification.

MR. VELIE: Very well.

Q With reference to 4D, which is the general ledger,

did National Student Marketing book certain revenues based on these contracts?

A Yes, they did.

Q What is the total of that revenue?

A The total of the revenue was $1,740,850.

Q Did it also book certain costs associated with that revenue?

A Yes, it did.

Q What is the total of the costs?

A The total of the cost was $1,068,330.

Q Is it fair to say that the difference between those two would be the gross profit on those commitments?

A Yes, it is fair to say that.

Q What is the arithmetic difference?

A The difference is approximately $670,000.

MR. VELIE: Does that clarify the matter, your Honor?

THE COURT: Thank you. In other words, according to your general ledger, you would show what you would call a gross profit of about $670,000 cast off by these particular commitments which you have been describing this morning?

THE WITNESS: That is correct.

THE COURT: Thank you very much.

3B

Q Mr. Kurek, I show you Government Exhibit 5 for identification.

Can you tell the jury what that is, please?

A It is National Student Marketing Corporation's annual report for 1968.

MR. VELIE: I offer it.

MR. MARTIN: Can I see a copy of it?

(Pause.)

MR. MARTIN: No objection.

MR. VELIE: Mr. Stillman.

MR. STILLMAN: I have no objection.

xxx (Government Exhibit 5 for identification was received in evidence.)

THE COURT: I have a copy. You gentlemen gave me this yesterday.

Q Mr. Kurk, would you look in the financial statements portion of National Student Marketing 1968 annual report and tell us, is there a figure there for the gross earnings before tax of National Student Marketing?

THE COURT: Where are we, what page?

THE WITNESS: Page 18.

Q REad the entry.

A Yes. There is an item labeled earnings before taxes and extraordinary items, $699,116.

Q Is the $670,000 of profit you told us on the commitments a portion of that $690,000?

A Yes, it is.

Q Would you look at the balance sheet, please, in the annual report.

Page, please?

A Pages 16 and 17.

Q Are you able to find an entry for the entire amount on the balance sheet of the commitments booked that you have been telling us about this morning?

A Yes. There is an item under the current assets titled unbilled receivables and accrued costs and estimated earnings on contracts in progress, $1,763,992.

Q Does that appear on the asset or on the liability side of the balance sheet?

A It is an asset.

THE COURT: Are you looking on Page 16 at the unbilled receivable and accrued costs?

MR. VELIE: Yes, your Honor, 1968 figure, one million --

THE COURT: Yes, I understand.

MR. MARTIN: I think if we were reading the document, we might read the fact it refers to note three --

THE COURT: Just a moment.

Mr. Martin, continue, and I am going to say this to all of you. I don't want to have to repeat it. You are unintelligible. I didn't hear a word you said. I am sorry.

MR. MARTIN: Apparently my problem is solved by Mr.Valie saying he is going to go on and do what I suggested.

THE COURT: What is that since I didn 't hear you?

MR. MARTIN: He is going to read the footnote.

THE COURT: I still don't hear you.

MR. MARTIN: That he read the note that goes with the entry.

THE COURT: Good. Please speak loudly because there is something about the acoustics. I don't hear a word you say.

MR. VELIE: The entry on the balance sheet indicates unbilled receivables and accrued costs and estimated earnings on contracts in progress and it says Note 3. Note 3 reads as follows: Its heading is "Contracts in progress.

"During the year 1968 the company's volume of business on fixed fee-type arrangements increased substantiall. This business involved employees of the company developing overall marketing and/or advertising programs for clients

and/or prospective clients. The major portion of the work done by the company involves determination of the client's requirements proposal by the company of an overall program. The eventual implementation of the agreed upon program is carried out by representatives and third parties generally on a fixed commission or charge per piece basis."

MR. STILLMAN: Excuse me, your Honor. I will read it again myself later.

MR. VELIE: "Owing to the nature of this activity, management believes that income is best matched against costs directly connected with the production of this income by recording the estimated gross profit based on t' percentage of time incurred to the total estimated time to be incurred by the employees in development of the overall program for the client. Accordingly, all such programs for which a client's commitment was considered to exist as of August 31, 1968, have been accounted for on this basis. Costs related to development of programs for which no client commitment existed as of August 31, 1968, have been charged to expenses."

Q You have already mentioned that there was an audit of National Student Marketing which began some time after August of 1968, is that correct?

A That is correct.

Q Could you tell us who was in charge for Peat, Marwick & Mitchell at that audit?

A Mr. Natelli was the partner in charge, as I understand it.

Q Who was in charge of the on-the-spot work being done?

A As I understand, Mr. SCansaroli was in charge of on-the-spot work.

Q Do you recall if there were any other accountants from Peat, Marwick & Mitchell working on the audit under those two gentlemen?

A Yes, I do.

Q Who were they?

A A Mr. Oberlander and Mr. Johnston.

Q All right.

Mr. Kurek, I placed before you again Government Exhibit 2 in evidence and ask you: Did you receive any communications which you placed in that file from salesmen concerning the conduct of the audit?

A Yes, I did.

Q Can you locate any such communications?

A Yes, I can.

MR. VELIE: I am now going to read this to the jury, your Honor.

MR. STILLMAN: Could you tell me where you are reading from, please?

MR. VELIE: Telegram time stamped October 20.

MR. STILLMAN: Is that towards the back or the front?

(Pause.)

MR. VELIE: It is addressed to Bernard Kurek, National Student MarketingCorporation.

"Under no circumstances should any west coast client be contacted regarding verbal commitment for NSMC Services by anyone but myself. We could lose $100,000-plus contract if unauthorized contact is made by auditors. Please call if you have any questions." Signed Jack E. Siadek.

Q Who is Jack Siadek

A Jack Siadek was a salesman in the -- on the west coast for National Student Market.

End 4A

Q Did you speak to anybody with respect to this telegram after you received it?

A Yes, I did.

Q To whom did you speak?

A I spoke with Mr. Randall.

Q When was that?

A It was on the day of or shortly after I received the telegram, the next day, as soon as I could.

Q Would you tell us, please, was anybody else there?

A Not that I recall.

Q What did you say to Mr. Randall and what did he say to you?

MR. MARTIN: Objection, your Honor.

THE COURT: Before we get to that, there's one clarification which I think I know the answer.

When you speak of Mr. Randall, you speak of Mr. Cortes W. Randall who at that time was the President?

THE WITNESS: That's correct.

THE COURT: And not his father.

THE WITNESS: That's correct.

THE COURT: You mentioned his father yesterday, I think, briefly. But you in all those questions which Mr. Velie is putting to you, I assume that he means and you mean

Cortes W. Randall, the President in 1968?

THE WITNESS: That's correct.

THE COURT: All right.

Gentlemen, as far as your objection is concerned, it is overruled at least to this extent. I'm going to take this subject to connection as I ruled yesterday.

Go ahead.

Q What was it that you said to Mr. Randall and what was it that he said to you?

A I told Mr. Randall that I had received this telegram and that I didn't see how the commitments that Jack Siadek had indicated he had obtained would beable to be recorded and entered as a part of the 1968 financial statements if the auditors couldn't confirm it.

Naturally, they are confirmed in writing. I told that to Mr. Randall.

He says, "See if there are other ways that they can confirm, make their confirmations."

Q Was another way found?

A Yes, another way was found.

Q Did you have occasion thereafter to have any part, be present while the confirmations were being done?

A I was not present when confirmations were done.

Q Very well.

Can you tell us what part, if any, you had with respect to the confirmation process?

A Yes. On about October the 25th, 1968, I flew from Washington, D.C. to New York with Mr. Scansaroli. When we got to NSMC's offices, Mr. Scansaroli and I went into Mr. Randall, the President's office, and I told him, Joe is here, Joe Scansaroli, and the purpose of his going up was to confirm by telephone commitments.

Mr. Scansaroli and Mr. Randall, the President, went into Mr. Michael's office, who was the accountant or salesman, and I went in there and there were two phones in there.

There were two of the three people on a phone, either Mr. Scarsaroli and Mr. Randall or Michaels, I don't remember which of the two of the three. But I left that office when the phone call started to be placed and went about whatever else I had gone up there to do.

That was my involvement in confirmations.

Q Very well.

When was Exhibit 5, the annual report for 1968, actually issued, if you know?

A It was issued around the middle of November, 1968.

Q Following November of 1968, did National Student Marketing acquire the businesses of any other companies, if

you know?

A Yes, it did.

Q Are you able to tell us from unaided recollection what businesses those were?

A No. There were a lot of them, and I don't recall the names of all of them.

Q Is there a document that you have seen which might serve to refresh your recollection or at least record the businesses and the dates when they were acquired?

A Yes, there is.

MR. VELIE: Let's have this deemed marked please, as Exhibit 46 for identification.

Q Can you tell us what this is, Exhibit 46?

A 46, the whole book?

Q Yes. What is it?

A This is a notebook containing various public documents that were produced during my tenure with NSMC. It is a book that I retained.

Q Did you put the public documents in there?

A Yes, I did.

Q All right.

Is there a document in there that you would like to look at?

A Yes, there is.

Q Tell us what it is.

A It is the annual report for the year ended August 31, 1969.

Q All right.

Why don't you look in there and see if there's something that would refresh your recollection as to acquisitions by National Student Marketing after November of 1968?

A Yes, there is.

MR. STILLMAN: May I have the page you are looking at?

THE WITNESS: It is page 47, footnote 2, businesses acquired.

MR. STILLMAN: Thank you.

Q Would you tell us, please, between November of 1968 and, let's say, the end of April of 1969, what businesses, if any, were acquired?

A The Colad Company was acquired in February of '69, Guest Pack Corporation was acquired in March of '69, Mail Bag Group of companies were acquired --

Q I believe that's after.

A I'm sorry, that's after April.

Renssalear Corporation was acquired in April of '69, National Scholastic List Company was acquired in December of '68, New England Travel Corporation was acquired

in February of '69, Impressions by M, Incorporated was acquired in April of '69, Consultants for Marketing Isolation, Inc., was acquired in February of '69. That appears to be all that were acquired through that April period you mentioned.

Q Thank you.

MR. STILLMAN: That last one has an asterisk. Never mind.

Q In November of 1968 and thereafter, did you have as part of your functions, as chief financial officer for National Student Marketing Corporation to send out requests for follow up information on these commitments that had been booked?

A Yes, I did.

Q I show you Government's Exhibit 6 for identification and ask you if you can identify that for us, please?

A Government's Exhibit 6 is a file which contains inquiries that we made following up on the commitments that were booked as of August 31, 1968.

Q Does a portion of that file have to do with inquiries made in November or at or about November?

A Yes, it does.

Q Is that file arranged more or less chronologically? Is that the idea?

A Reversed chronologically.

Q You started at the bottom and built it up chronologically?

A Yes.

Q All right.

So that at the back of that file are the November status reports, is that right?

A That's correct.

Q All right.

MR. VELIE: I will offer the exhibit at this time, Exhibit 6.

MR. STILLMAN: I have just a couple of questions.

VOIR DIRE EXAMINATION

BY MR. STILLMAN:

Q Mr. Kurek, this document, Exhibit 6, is headed at the top August 31, 1968. That language, whose handwriting is that?

A It appears to be Mr. Chapman's handwriting.

Q All right.

There are some notes in here from him I see at the top, BC, is that right?

A The top note is a note.

Q Is Exhibit 6 a record made in the regular course of business of National Student Marketing Corporation?

A I didn't hear the first part of what you said.

Q Excuse me, sir.

Is the record, the record contained in Exhibit 6, a record which was made in the regular course of the business of National Student Marketing Corporation?

A Yes, it is.

Q Was it the regular course of the business of that company to make and keep such records?

A Yes.

MR. STILLMAN: Have no objection.

MR. MARTIN: One question, your Honor.

xx VOIR DIRE EXAMINATION

BY MR. MARTIN:

Q Mr. Kurek, was Government's Exhibit 6 given to Mr. Natelli?

A Was Government's Exhibit number 6 given to Mr. Natelli?

Q That's right.

A I assume it was. I don't know how else he got it. I don't --

Q You assume it was you mean in preparation for this trial?

A Yes. I don't follow specifically what you are asking.

Q The question is, did you at the time that was prepared or prior to this trial, give that to Mr. Natelli?

A I did not personally give it to Mr. -- oh, to Mr. Natelli?

Q Right.

A I am sorry. I was thinking Velie.

Restate the question. I am sorry. I was thinking of --

Q Did you give Government's Exhibit 6 to Mr. Natelli in 1968 or 1969?

A I don't know whether I gave this file to Mr. Natelli at that time.

MR. MARTIN: Objection, your Honor, on the grounds of relevance.

THE COURT: I am going to receive the profferred documents. However, I would say to you and, more importantly, to your client, Mr. Martin, I am not making that ruling suggesting that he saw it. There has been no proof so far. We will see what happens.

xx (Government's Exhibit 6 received in evidence.)

MR. VELIE: Your Honor, we do have a copy if you would like to have it.

THE COURT: No, go ahead.

MR. VELIE: Your Honor, I would like to read this page.

MR. STILLMAN: Is November 25 the date on the document?

MR. VELIE: Yes.

MR. STILLMAN: All right.

MR. VELIE: Headed NSMC memorandum, from Bernie Kurek to Ron Michaels, date November 21, 1968, re: contracts booked per verbal commitment as of August 31, 1968.

"As you know Peat Marwick, Mitchell and Company let us book revenues on contracts which we had received

verbal commitments for. As of today, have you received any contract, letter of commitment, et cetera, on the following? You can answer by checking or filling the appropriate column to the right of the contract and signing at the bottom of this memo."

BY MR. VELIE:

Q First, before I go ahead, Mr. Kurek, the hand-written entries in here at the left in black, who wrote those, if you know?

A That's my printing.

Q So you wrote in the client and the amount you were asking him about, is that correct?

A That's correct.

Q Listerine $70,200, Clairol $500,000, Cheeseborough Ponds $100,000.

Now, sir, the check marks to the right and the signature and the date, are you able to identify those as being Mr. Michaels?

A Well, the signature is Mr. Michaels and I assume the X's there are. Well, I can't say that that's his.

Q They look to you to be in the same color ink, the X's?

A Yes, it does.

Q All right.

MR. VELIE: The X's on the line for Listerine, underneath where it says "Contract not signed," indicated by an X, "Letter of commitment not received," indicated by an X.

Clairol $500,000, "Contract," an X underneath where it says "Not signed," "Letter of commitment," an X where it says, "Not received."

Cheeseborough Ponds contract for $100,000, an X underneath where it says "Not signed," "Letter of Commitment," an X underneath where it says "Not received."

The line where it says "Signed," "Ron Michaels," "Date November 25, 1968," a date stamp that says, "Received December 2, 1968 NSMC D.C. Accounting Department."

Q Looking at that chronological file, are you able to tell -- let me put it to you this way:

Did you send inquiries similar to that to the other salesmen?

A Yes, I did.

Q Prior to December 9, by looking at your chronological file, had you heard anything yet from Mr. Ganis or Mr. Siadek?

MR. STILLMAN: May I have the question, your Honor? I am sorry.

Would you read it back, Mr. Reporter?

(Question read.)

A No, I had not received anything from them prior to December 9.

Q Now, sir, did you have occasion to discuss any of this follow up information you had received with Mr. Natelli?

A Yes, I did.

Q Can you fix that date for us?

A Yes. That date was December 9, 1968.

Q Did you have a conversation with Mr. Natelli that day?

A Yes, I did.

Q Was that on the telephone or in person, the conversation you have in mind?

A The first conversation I had on that date was on the telephone, as I best remember.

Q So far as you could tell, who was on the telephone?

A Just Mr. Natelli and myself.

Q What did you say to him and what did he say to you?

A I told Mr. Natelli during the course of the conversation that we were not getting the follow up material or any cooperation from our salesmen with respect to these commitments and follow up that the Accounting Department was

trying to get and that from what I had gotten insofar in the way of replies, I had gotten no verbal commitment -- no written contracts or letters of commitment, and here it is December 9, I haven't done any billing, I haven't done any collecting on these, I am not even getting any follow up information from the account executives or salesmen.

Mr. Natelli was concerned about it and asked that we have a meeting with Mr. Randall.

That was the substance of the telephone conversation.

Q Did you have that meeting with Mr. Randall?

A Yes, I did.

Q When was that?

A That was also on December 9, in the late afternoon, early evening.

Q Do you recall who was there?

A Yes.

Mr. Randall was there, Mr. Buck, who was the controller of National Student Marketing at that time, Donald and Rob Fergusson, who were employees of National Student Marketing, and Alan Mackenzie, who was Mr. Randall's assistant, John Davies, who was also a NSMC employee, was in and out of the meeting, Mr. Natelli and Mr. Scansaroli and myself were present.

Q Do you recall what was said by those persons who spoke at that meeting?

A The important part that I remember --

Q Would you give us that?

A --was Mr. Natelli talking to the group, but primarily Mr. Randall, saying that he had conversations with me and that I had reported to him that we were trying to get follow up information, we were trying to get the salesmen to report to us, we were also trying to get contracts or letta of commitment, and he had an earlier discussion with me, Mr. Natelli had that day, and I was concerned about it, and he wanted to impress upon Mr. Randall and the other officers that were present of NSMC, the importance of this material being gathered and systems being set up so that -- and the importance of the salesmen replying to us.

Mr. Natelli also said he wanted some formal way, a formal time log set up so that there would be a formal way of estimating percentage of completion in the future, and he said -- Mr. Natelli also stated that by August 31, of 1969, the next year end, he wanted the commitments to be firm enough so that they could be confirmed by Peat, Marwick and Mitchell in writing.

I don't recall all of Mr. Randall's reply but I do remember him telling Donald Fergusson, to whom the sales-

men reported at that time, that he had heard enough of this lack of cooperation and this whole subject matter of commitments, that in thirty days he wanted it cleared up, Mr. Randall wanted Mr. Fergusson to clear the matter up, so that he didn't have to sit through a meeting like this again.

Q I show you Government's Exhibit 7 for identification and ask you if you can tell the jury ~~want~~ what it is.

A Government's Exhibit 7 is a memo from me to the salesmen dated December 10, 1968.

Q That is the day after that meeting?

A Yes, sir. And there are some attachments to it.

Q Does it concern itself with that meeting?

A Yes, it does.

Q Does it have directions from you to them?

A Yes, it does.

MR. VELIE: I offer it.

MR. STILLMAN: I have no objection to it.

MR. MARTIN: No objection.

xxx

(Government Exhibit 7 was received in evidence.)

MR. VELIE: I have a copy for your Honor if you wish.

NSMC memorandum from Bernie J. Kurek to all National Student Marketing Corporation account executives, date December 10, 1968.

"On December 9, 1968, a meeting was held with Tony Natelli and Joseph Scansaroli, both of Peat, Marwick, Mitchell Company, Cortes Randall, Don Fergusson,Rob Fergusson, John Buck, JohnDavies, Alan Mackenzie and myself. The purpose of the meeting was to discuss and review the uniqueness of National Student Marketing Corporation's accounting, particularly in the revenue and contract areas. They also stated that by August 31, 1969, they wanted all contracts or commitments to be firm enough for them to be able to send written confirmations to the clients. They also wanted a more complete basis for estimating the percentage of the contract time that has been completed. In order to accomplish this the following forms have been revised or created. An account executive time log has been initiated so that account executives can maintain a log of the time spent on various clients in which they are working on contracts and sent to the comptroller weekly."

Gentlemen, would you like me to read any further portion of this?

MR. STILLMAN: I would love to hear it all.

MR. VELIE: Very well.

"We have also revised the form that we used on August 31 to get information on a client's program so that the estimated costs can be projected and estimated profits predicted. This is also to be forwarded to the comptroller on the date of any commitment.

"It is of utmost importance that these forms be used for the purpose for which they have been created in order for National Student Marketing Corporation to be able to book revenues in accordance with the policies that they were booked on August 31, 1968."

Q Mr. Kurek, was there later follow-up information that you had and relayed to Mr. Randall or anybody else? Did you receive later follow-up information?

A With respect to commitments?

Q Yes, sir.

A Yes, I did.

Q I show you Government Exhibit 9 for identification. Can you tell us what that is, please.

A Government Exhibit 9 is a copy of an agenda of a March 1, 1969 meeting I had with Mr.Randall and supporting

documents that we met about.

MR. VELIE: I will offer it.

MR. MARTIN: Your Honor, would this be a convenient time for the morning recess? What time does your Honor normally take it?

THE COURT: I am just about to, but let's focus on this, if you don't mind. This has been offered. What is your position?

MR. MARTIN: I would have an objection. I would like to state it at more length, not before the jury. That is why I suggested this would be an appropriate time.

THE COURT: All right. If that is the problem we will take the morning recess at this point.

Mr. Light and ladies and gentlement, I think and hope about ten minutes,but if I am wrong I will send you word.

(Jury left the courtroom.)

THE COURT: Mr. Martin, you wish to object to something?

MR. MARTIN: Yes, your Honor. The objection we have been raising is the conspiracy objection. I want to say, (1), that goes to the time the conspiracy did not exist, and also how this can be in furtherance of a coverup

for September of 1969 and 1968 I do not understand. Therefore I am making the objection both on the ground it is not in the course of a conspiracy nor in furtherance.

THE COURT: Mr. Martin, those are your wor ds and your thoughts. They are not necessarily the thoughts and words by any means of this Court. I consider other things to be going on here.

The ruling in all of this is subject to connection. There has been no showing that your client saw any of this or that he was even given an opportunity to look at them. I realize that. I am taking them subject to connection.

I see no penalty to you because most of these exhibits to which you have objected I deem as maybe potentially helpful to your client.

So I am living in Alice's garden.

The ruling stands, but I am not taking this strictly on a conspiratorial notion. Your client is shown to have been working with this concern on a very senior level as an accountant during all the time period in which these documents are being admitted. The same goes with respect to the testimony .

Y ou are quite rightin suggesting several things, but that doesn't mean that I am bound by your thoughts as to what I am doing in the ruling. That is Number 1.

Number 2, it isn't just conspiracy, I assure you. I am not saying that there has been any proof of conspiracy or, indeed, that this is the reason why I am admitting this.

So if you will please accept that partial explanation, perhaps we can get to the bottom of this and understand each other better.

Now, second, I continue to be astonished. This is only the second time I have heard you in this case. I never heard a word of your opening. I can't understand anything you say from the back table.

The only person I can hear at all in this case is Mr.Stillman.

Now, I don't know what has come over you gentlemen. Maybe you don't want anybody to hear you.

But I assure you you are not being heard. I mean that. Partly it is the way you articulate, partly it is because of the acoustics, which demand strong speech here.

Knowing you, Mr. Martin, you are not a man who is usually unintelligible, as far as I am concerned, but I mean this most earnestly. The reporters are having trouble, I am having trouble,it may well be that others are having trouble. As of the completion of the last trial in this room the other day our hearing was excellent. We

had no trouble hearing anybody.

But in United States vs. Randall et al, I assure you I mean what I say. I only heard about ten words of your opening yesterday. I really couldn't hear your objection this morning.

MR. MARTIN: I am sorry, your Honor. I will try to keep that in mind.

THE COURT: I know you don't intend it.

Mr. Velie, you are not heard. I don't know what you are talking about half the time and I marvel that the witness does. He is having trouble, however. I notice the way he cocks his head he is having trouble.

Now, gentlemen, speak up, please. You are capable of doing it.

MR. MARTIN: Your Honor, further with this exhibit --

THE COURT: May I see this exhibit? There may be other reasons than the ones you are arguing.

MR. MARTIN: I haven't addressed myself to that exhibit yet, your Honor. I would like just to have the record clear. I don't like to ask for side bars. I know that our Court of Appeals sometimes takes ~~Judges~~ lawyers to task for our not telling them what our thinking is.

THE COURT: I know that, but I am telling you

that I am not necessarily bound in my rulings by what your motions are.

MR. MARTIN: I have been in enough courts to know that.

THE COURT: However, I think you have other good reasons for objecting to this document, Government Exhibit 9.

MR. MARTIN: I wanted to say that I do object to this, your Honor, on the grounds that here is a document between Kurek and Randall.

Now we are in February. There is no audit going on. It is filled with a lot of hearsay.

End 5B

THE COURT: Not only that, I deem it as being irrelevant from what I have heard so far. So I will sustain the objection without prejudice to the Government reoffering it later if it becomes relevant.

MR. VELIE: If you will hear me, your Honor.

You have looked at the first several pages of the document which has to do with airline tickets and things which are irrelevant. There are portions of it which are plainly relevant. What this document does in part is it tells Mr. Randall that Mr. Kurek has already found out and in part told Mr. Natelli nobody is able to collect on these commitments.

This is dated March 1.

THE COURT: I understand that. May I say to you, please, Mr. Velie, you are overtrying your case.

Number 2, an agenda doesn't mean that anything happened. I don't know what happened at this meeting. If we are going to dump in all these fancy agenda that these fellows -- you know how businessmen are. They do all these marvelous things which impress probably no one except themselves. That has nothing to do with us.

MR. VELIE: Very well.

THE COURT: I don't want a paper dumping operation. This is not that kind of a situation.

MR. VELIE: I will simply inquire --

THE COURT: If you want to ask him whether there was any conversation between him and Randall, I am taking those subject to connection for a variety of reasons.

Second of all, if there is some specific document which you claim that you can prove later on Mr. Natelli or Mr.Scansaroli was given and shown, saw, whatever, fine.

But a general paper dumping operation I do not think is necessary.

The ruling stands for that simple reason alone.

Yes, sir.

MR. MARTIN: Just a point of order. Does your Honor -- can we have a standing objection or would your Honor prefer we object to these hearsay as they come up?

THE COURT: As you said earlier, I understand lawyers being concerned about appeal and you have every right to object. I will continue to rule that I am taking it subject to connection. Some of this you apparently do not object to.

Therefore, I think you ought to object wherever you feel like it.

MR. MARTIN: Fine, your Honor.

THE COURT: All right. Let's take five minutes.

(Recess.)

(In open court; jury present.)

BY MR. VELIE:

Q Mr. Kurek, did you have a meeting with Mr. Randall in the early part of March of 1969 concerning these commitments that we have been talking about all morning?

A Yes, I did.

Q What was the first such meeting that you recall in March?

A When was it?

Q Yes.

A It was March 1, 1969.

Q Do you remember who was there?

A Just Mr. Randall and myself.

Q Do you recall what you said to Mr. Randall and what he said to you, in substance, about the commitments?

MR. MARTIN: I object to the conversation.

THE COURT: Yes, same ruling. I am taking this subject to the connection only as to the defendants.

Q Do you have a recollection of what was said?

A Yes. We went over a variety of items, but primarily with respect to the commitments.

We had a discussion and I believe a schedule or some memoranda indicating things that had been reported to me.

Q I show you Government Exhibit 9 for identification Can you tell us what that is?

A This is the agenda and the material that we went over in that meeting of March 1, 1969.

Q Would it refresh your recollection as to the specific items you talked about if you had to look in there?

A Yes, it does.

Q All right.

Would you tell the jury, please, what it was that y ou reported to Mr. Randall regarding the commitments from what you knew?

A With respect to the commitments?

Q Yes, sir.

A I reported to him that Mr.Ganis had reported either verbally or in writing to the accounting department, to me, that some $200,000 of his commitments that he had committed both as of August 31, 1968 and November 30, 1969, were not any good.

I also pointed out to Mr.Randall that I was -- I also told him that another $600,000 didn't appear to be good, they were the ~~wrong~~ Ron Michaels contracts, the $500,000 one, the $100,000 one and the $70,000, which is 670 really.

Then there were other account executives that had reported a variety of them in the tune of -- in the amount of a couple of hundred thousand also.

Q What's the rough total --

A About a million dollars.

A Yes.

Q Did you have a later meeting with Mr. Randall on this subject?

A Yes, I did.

MR. STILLMAN: Your Honor, I wonder if I can inquire whether Mr. Randall spoke at this meeting or should I save that for cross?

I will withdraw it.

Q Did you have a later meeting with Mr. Randall?

A Yes, I did have a later meeting.

Q When was that?

A It was the following Saturday, March the 8th, 1969.

Q All right.

Did you also prepare an agenda and some memoranda with respect to that meeting?

A Yes, I did.

Q I show you Government's Exhibit 10 for identification, Mr. Kurek.

Tell the jury, please, what Exhibit 10 is.

A Exhibit 10 is the agenda and the documents that we reviewed in the meeting of March the 8th.

Q All right.

Did you have occasion to deliver a copy of any one of the memoranda in Exhibit 10 to any other person besides Mr. Randall that you recall?

A Yes, I did.

Q All right.

To whom did you deliver the piece of paper you are talking about?

A It was delivered to Mr. Natelli.

Q Do you have the piece of paper in front of you?

A Yes, I do.

MR. VELIE: I will offer it.

(Pause.)

MR. VELIE: May I have this marked Exhibit 10A, please, your Honor.

THE COURT: Surely.

xx (Government's Exhibit 10A marked for identification.)

MR. VELIE: The Government offers 10A.

THE COURT: Generically speaking, Mr. Kurek, how would you describe that document, a schedule?

THE WITNESS: It is a schedule of projected profits for NSMC.

THE COURT: Thank you.

MR. STILLMAN: I object to it, your Honor.

THE COURT: When did you give this to Mr. Natelli?

A It was on or around that day, October the 8th, or the first part of the following week, as I can best remember.

THE COURT: October 8?

THE WITNESS: I'm sorry, March the 8th of '69 or shortly thereafter.

THE COURT: All right.

10A will be received as to the defendant Natelli, subject to connection as to Scansaroli.

xx (Government's Exhibit 10A for identification, received in evidence.)

Q Mr. Kurek, would you please point out on this exhibit the line which shows the estimated profit or projection of a profit or loss that you made and shown to Mr. Natelli?

A Well, from the information that I knew, I was predicting as of August 31, 1969 that there could be a loss as high as a million, seven hundred thousand dollars in round figures if the commitments that had been reported as bad were removed from the books.

Q All right.

There is some other information on this sheet of

paper below the figure, the loss of $1,700,000.

Would you describe what that information is?

A Yes. That information is a forecast of the sales that I felt were needed in order to attain a profit goal after taxes of $410,000 that Mr. Randall was shooting for.

Q All right. What is the amount of sales required to absorb the loss to come up with a profit?

A $5,028,000 is what I had projected with the sales that were needed in order to hit the target of $410,000 of profits.

Q Did you have occasion to discuss this piece of paper and this information with Mr. Natelli?

A Yes, I did.

Q Was anybody else present?

A Yes, Mr. Randell was present.

Q Can you fix the approximate date?

A It may have been that same Saturday, March the 8th, or a Saturday subsequent to that. I distinctly remember it was a Saturday. We were casually dressed and met in Mr. Natelli's office.

Q All right.

Do you recall the conversation that took place on that day, your best recollection?

MR. STILLMAN: Same objection, your Honor.

THE COURT: No, I am taking this subject to connection at least in respect to your client.

Go ahead.

A No, I don't recall the specifics of that meeting that day.

Q Do you recall in substance the topic covered?

A Yes, I can recall that Mr. Randall was saying that the company was not going to lose that kind of money, the million, six that I was projecting, that he had acquisitions and he knew of commitments and contracts that the salesmen were working on, and that's really about all I can remember in substance of that meeting.

Q Sir, did there come a time when certain 1968 commitments, that is commitments which were recorded as income as of 1968, were written off and deleted from National Student Marketing's own books?

A Yes, there did come a time.

Q First of all, what was the amount of commitments which were thus subtracted from National Student Marketing's books?

A I think somewhere in the neighborhood of a million dollars.

Q All right.

Do you remember the approximate time period when

this took place?

A Yes, they were written off in approximately April or May of 1969 but reflected in the February 28, 1969 statements.

Q Did you personally do the writing off process or did you delegate that to anybody?

A I delegated it.

Q To whom?

A I don't recall personally.

Q Do you remember to whom you might have delegated or to whom you did delegate?

A Yes, I think Mr. John Buck, who is the controller who oversaw the write off.

Q On or about that time, was another large unbilled account receivable commitment booked as earnings and sales of National Student Marketing?

A Yes, it was.

Q This was a commitment by what company, please?

A By Pontiac, the Pontiac Division of General Motors.

Q Do you recall the size of the gross commitment?

A The Pontiac gross commitment was in excess of $1 million.

Q I show you Government's Exhibit 12 for identification and ask you if you can identify it.

A Yes. This is a letter from the Pontiac Motor Division, a commitment letter to the National Student Marketing Corporation.

Q With respect to the commitment you just mentioned?

A Yes.

MR. STILLMAN: I have to request another voir dire, your Honor.

THE COURT: What date appears there, Mr. Kurek?

THE WITNESS: April 28, 1969 is the date of the letter.

THE COURT: Thank you.

xx VOIR DIRE EXAMINATION

BY MR. STILLMAN:

Q I now, Mr. Kurek, that this is a so-called Xerox or photocopy. Do you know where the original of this document is?

A I do not know where the original is.

Q Did you see the original at some time?

A I don't recall ever seeing the original.

Q Do you know personally Mr. J. H. Graham, which writing appears at the bottom of this document?

A Do I personally know him?

Q Yes, sir.

A No, sir, I don't.

Q Do you know whether in fact Mr. J. H. Graham signed this letter?

A No, I don't know in fact whether he signed it.

Q Do you know whether or not in fact Mr. Cortes Randall forged J.H. Graham's signature to this letter?

A No, I don't in fact know that either.

Q Did you ever hear that, sir?

A I have heard it, yes.

Q Do you believe it to be so?

A I don't know that he did or didn't. I have heard it.

MR. STILLMAN: I have no objection to the document, your Honor.

THE COURT: Mr. Martin?

MR. MARTIN: No objection.

xx (Government's Exhibit 12 received in evidence.)

MR. VELIE: Your Honor, would you like a copy?

THE COURT: Thank you. I will just look at this quickly.

MR. VELIE: Dated April 28, 1969. This copy appears to be a copy of a paper that has the Pontiac Motor Division letterhead, at the top. It appears to have the signature at the bottom of a J. H. Graham. The body of the letter reads as follows:

"Mr. Dennis Kelly, National Student Marketing Corporation, Time & Life Building, New York, N.Y. 10020."

BY MR. VELIE:

Q I interrupt for a second and ask you who Dennis Kelly is?

A Dennis Kelly was a salesman for National Student Marketing.

MR. VELIE: "Dear Mr. Kelly.

"This will confirm our recent conversations relative to our plans for use of the services of National Student Marketing Corporation in model year 1970.

"You have submitted to us various proposals for directing sales influence toward the Student population of the U. S. These proposals in total would require an outlay of approximately $1,900,000.

"We are now planning to implement student influence proposals that would result in gross billings of $1,200,000.

"I will keep you informed as our plans progress."

MR. STILLMAN: "Best regards."

MR. VELIE: I am sorry. "Best regards, J. H. Graham," and that has "J. H. G. JHG:sn".

BY MR. VELIE:

Q Was this ~~Pontia~~ Pontiac commitment evidenced by this Xerox paper here booked as earnings or sales of National Student Marketing?

A Yes, it was.

Q As of what period?

A As of February 28, 1969.

Q Can you tell us the relative proportionate size of that commitment with respect to the balance of the sales for the second quarter? For instance, was it some percentage of the second quarter's sales, if you know?

A I don't know.

Q You don't recall?

A No, I don't.

Q Calling your attention to the period early June 1969, do you have a recollection of a conversation with Mr. Natelli concerning National Student Marketing unbilled account receivable accounting?

A Yes, I do.

Q I show you Exhibit 14 for identification and ask you if you can identify it.

A Yes, I can identify it.

Q What is it?

A It is a memorandum to Cortes Randall, the President, from me dated June 3, 1969, regarding a meeting which I had with Mr. Natelli of that date.

Q Concerning unbilled account receivable accounting?

A Yes.

MR. VELIE: Your Honor, the Government offers Government's Exhibit 14 at this time.

MR. MARTIN: Same objection, your Honor.

THE COURT: Wait a minute. You throw me off. Last time you didn't object, on the last go around. This puts me in constant confusion. Same objection as to what?

MR. MARTIN: The last one was one this witness testified was given to my client. I couldn't object to that.

THE COURT: I agree on that basis.

MR. STILLMAN: I object, your Honor.

THE COURT: Mr. Velie, I don't understand. I suppose you are offering this on the theory that it is a record kept in the regular course of business.

MR. VELIE: That's a reason for admitting it, your Honor, but the basis of the offer as described in our memorandum which we discussed the other day, is that it is a statement in furtherance of the joint activity charged in

count 2, a statement by Mr. Kurek to Mr. Randall recording a statement made by Mr. Natelli to him.

THE COURT: Rather than go through all this somewhat involved business of paper why don't you just ask him what the conversation was. I think that is what you really want to offer, what he and Mr. Natelli discussed, as he recalls it.

MR. VELIE: Yes, your Honor. I also want to put the paper before the jury as well to show two things, to show --

MR. MARTIN: Your Honor, if we are going to have a lot of what he wants to show to the jury --

THE COURT: In any event, for the moment, I see no purpose in offering this internal memorandum, particularly since, as I understand it, what you really want to do is get in the conversation between him and Natelli. I will take that.

MR. VELIE: Very well. I also want, if I may, to offer it as a statement made to Randall, and this paper is a statement made to Randall in furtherance --

THE COURT: Fine. Let's get to that later. At the moment, in the early going, when we are going very slowly, one thing at a time. We really ought to do it and get it done and worry about all these great matters later, when the

record is more complete.

BY MR. VELIE:

Q What was the date of the conversation you had with Mr. Natelli, if you recall?

A It was June 3, 1969.

Q Who was present?

A Just Mr. Natelli and myself.

Q Do you recall what you said and what he said in that conversation?

MR. STILLMAN: I would like to object to the conversation, your Honor. I would also for the record, point out to you that it is this conversation that I addressed myself to in an earlier motion that I made.

THE COURT: I quite agree. I understand all your objections.

However, I am going to take this as to Mr. Natelli and I am going to take it subject to connection as to Mr. Scansaroli.

MR. STILLMAN: Thank you, your Honor.

THE COURT: Go ahead.

Q Do you recall the question?

A Will you ask it again?

Q What was it that you said to Mr. Natelli and what was it that he said to you in your conversation of June 3?

A Well, in the conversation Mr. Natelli stated that it appeared that unbilled receivables at year end August 31, 1969, may be as high as some $4 million and that they were very significant and that unbilled receivables were now at a point where they either made or broke the company and he was very concerned about it.

He also stated that he had accounts working under him who were concerned about the situation, unbilled receivables, and felt that if anything were to go wrong both their careers and their CPA certificates could be at stake.

I don't recall arguing or discussing the issue, but I did invite Mr. Natelli to attend the next finance committee meeting of NSMC.

Q Showing you Government's Exhibit 14 in evidence again --

THE COURT: No, no. It is not in evidence.

MR. VELIE: I am sorry.

Q -- for identification, showing it to you again, did you send the original of which that is a copy to anybody.

A Yes. Mr. Randall would have been sent the original because that is to whom it was.

MR. VELIE: I offer it again, your Honor.

MR. MARTIN: Same objection.

THE COURT: I am not going to receive it at this point. I am going to have to have a discussion with you gentlemen because apparently, Mr. Velie, I have not made my point. I don't blame you for this. It may well be that I haven't articulated it well enough. I will discuss with you and the gentlemen at the back table at some suitable interval, but not now.

MR. VELIE: Thank you.

THE COURT: 14 will not be received at this point without prejudice to possible renewal of your offer later.

Q Mr. Kurek, you have described the conversation. You said something about concerning about CPA certificates and careers, is that correct?

A Yes, I did.

Q Do I understand that a CPA certificate is a professional license to practice as a certified public accountant?

A That's right.

Q Did you understand that to be the reference in the conversation with Mr. Natelli?

A I did.

Q Did you have any conversations with Mr. Scansaroli on a related subject or on a similar subject at any time?

A Yes, I did.

Q Please tell the jury when that was, if you can fix the time?

A One afternoon after lunch in the summer of 1969.

Q Do you recall who was present?

A I believe John Stalick was present.

THE COURT: John who?

THE WITNESS: Stalick. He was a budget director for NSMC at the time.

Q Could you tell us the conversation as you recall

it at that time?

THE COURT: I am sorry. I am confused. You are going to tell us now about a conversation between you and this man named Stalick?

I don't follow this.

MR. VELIE: May I clear this up, your Honor?

THE COURT: I think you would help us if you would clarify it.

Q Who were allthe parties present at that conversation?

A The parties present at that conversation were John Stalick, Joseph Scansaroli and myself.

Q What was the conversation that you recall?

MR. MARTIN: Objection, your Honor.

THE COURT: Again, I am taking this as to Scansaroli, subject to connection as to Natelli.

Q Tell us the conversation, Mr. Kurek.

A The conversation was after lunch. Mr. Scansaroli was talking or we were all talking about commitments and Mr. Scansaroli indicated that he was concerned ab out it, that he didn't know whether the right decision or the right type of accounting had been made back in August, and he was concerned about his CPA certificate. He also said, "Perhaps

I ought to put it in a locked box in a bank."

That is the extent of the conversation.

Q You have already told us that following your conversation with Mr. Natelli youinvited him to the finance committee meeting. Did Mr. Natelli -- ex cse me. I will withdraw that for a second and ask you something else instead.

Did you have occasion on or around June 6 to prepare any analytical schedules or memoranda about these commitments for Mr. Randall?

A Yes, I did.

Q I show you Government Exhibit 15 for identification. Can you identify it?

A Yes. This is the analysis of the commitments and the cover memorandum to Mr. Randall regarding that.

Q When did you prepare that?

A This was prepared on June 6, 1969.

Q When was the meeting to which you invited Mr. Natelli?

A It was June 9, 1969.

Q Do you recall who was there?

A Yes. Mr. Randall, Mr. Walther, Mr. Joy, Mr. Fergusson and Mr. Natelli and myself.

Q Was Government Exhibit 15 there at that meeting, if you recall?

A Yes, it was.

Q Was it referred to in the discussion by the parties who discussed matters at that meeting?

A Yes, it was.

MR.VELIE: I offer it.

MR. MARTIN: I object, your Honor.

THE COURT: Objection of Natelli overruled, received subject to connection as to Scansaroli.

MR. MARTIN: May I ask one question on the voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. MARTIN:

Q Can you testify, sir, that that document was specifically given to Mr. Natelli during that meeting.

A I don't recall whether it was specifically given to Mr. Natelli.

MR. MARTIN: I renew the objection.

THE COURT: Same ruling.

MR. VELIE: With the Court's permission, I would like to read portions of this exhibit. From Page 1 of the schedule, the column on the left indicates August 1968.

BY MR. VELIE:

Q Mr. Kurek, can you tell us what the reference

is, August 1968, to this column? What does that refer to?

A That refers to the contracts that were booked as of August 31, 1968.

MR. VELIE: The entries are R. Michaels and underneath Mr. Michaels' name is Clairol verbal $500,000, Listerine verbal $70,000, Cheseborough Ponds verbal $100,000.

Reading further over, there is a column that says amounts, underneath the three separate columns, billed, collected, written off. The ~~entries~~ entries in the written off column, Clairol writt en off $500,000, Listerine written off $70,000, Cheseborough Ponds written off $100,000.

There is an entry for a salesman by the name of Ganis. Contracts for Gossard, the indication is it is verbal in the amount of $56,250, Chicken Delight verbal $50,625,Cheseborough Ponds verbal $30,000, duPont verbal $70,000, Faberge verbal $56,250, Chattem Drug verbal $56,250, Campana Contract $56,250.

MR. MARTIN: You want to read the rest of that entry?

MR. VELIE: I am going to read the rest of the entry, Mr. Martin.

For Gossard there is no entry for billed, collected or written off. For Chicken Delight the entry is writeoff $50,625. For Cheseborough Ponds there is no entry

for billed or collected. It is $30,000 written off.

DuPont, there is no entry for billed or collected, $70,000 is written off .

Faberge, there is no entry at all, whether billed, collected or written off.

Chattem Drug, written off, $56, 250.

Campana, billed $31,875, collected $31,875.

On Sheet 2, an entry for a salesman by the name of Siadek, still 1968 commitments. Bizarre Productions, verbal $7,200, no entry whether billed, collected or written off.

Carnation verbal $28,000, no entry, billed, collected or written off.

Barnes-Hind verbal $52,200, neither billed, collected nor written off.

Then there is Barnes-Hind contract $25,600, not billed, collected or written off.

On Sheet 5 I am going to read the entry for the salesman whose name is Ganis. Total sales $480,000, 16 per cent billed, 15 per cent collected, 52 per cent written off.

The next page, Sheet 6, an entry for Mr. Michaels, total sales of $675,000, 1 per cent billed, the same per cent collected, 99 per cent written off.

An entry for Mr. Siadek on that page, $287,000 total sales, 8 per cent billed, 8 per cent collected, none are written off, 46 per centof them are verbal and 54 per cent contract.

The entry for Mr. Kelly appears on Page 5. It shows total sales of $883,548, 5 per cent billed, 5 per cent collected, 2 per cent written off, a letter commitment for $821,787 entered in here.

Q Do you know what commitment of Mr. Kelly's was in the amount of $821,787?

A This was probably Pontiac.

Q That is a percentage of the Pontiac commitment?

A That is a portion of that one million two.

Q 93 per cent of Mr. Kelly's sales is the Pontiac contract.

Now, sir, at that June 19 meeting you already told us who was there.

Would you please tell us what the conversation was at that meeting.

A The conversation was about unbilled receivables and its significance on the August 31, 1969 financial statements.

Q Try to tell us who spoke and in substance what he said. It makes it easier to follow.

A Mr. Randell spoke and stated that a million seven in unbilled receivables had been booked in August, as of August 31, 1968, and for the first quarter ending November 30, 1968, approximately 600,000 had been booked, and then for the six months ending February 28, 1969, about another million had been booked or a total of three, three, $3,300,000.

Q All right.

A As of June, the date of this meeting, about a million of it had been written off, most of which was verbal

and went back to the August '68 bookings. Mr.Randall also stated that the experience with written commitments was better than that of the verbal.

Mr. Natelli said, "Well, of the unbilled receivables that you have, it is all sitting in ~~on~~ un billed receivables. You haven't billed any of it."

He also said, "If anything were to go wrong with one of these commitments, would you be able to sue or would you sue?"

Mr. Natelli also indicated, he says,"I doubt that you would have a case."

It was sort of a gentleman's argument, and Mr.Randall then replied that he didn't think that we were getting anywhere, that he didn't feel that Tony wanted to sta the company, that we had always been able to work out our problems, and between now and the end of the year perhaps a ~~million dollars~~ middle of the road approach could be found.

That is the specifics of the commitments portion of that meeting that I remember.

Q Is that your best recollection of what you r ecall of the meeting?

A Yes.

Q Is there anything that might refresh your re collection as to other portions of the meeting?

A There are partial notes of the meeting.

Q Do you know how such partial notes got taken or made?

A They were taken down by a secretary, but I don't know who she was.

Q I show you Government Exhibit 16 for identification. Can you identify that?

A Yes. These are the partial notes of that June 9th meeting that I was just referring to.

Q All right. To focus this for you, Mr. Kurek, would you have a look, please, at the fourth page, at the top entry on the page. Read that to yourself, please, and not aloud, and tell us if that refreshes your recollection of any further portions of this conversation.

A Yes,it does.

Q Set it aside, please. Tell us what you recall now of the balance of the conversation.

MR.MARTIN: If it is any help, I am not going to have any objection if you want to offer it.

MR. VELIE: I will offer it in a second. I will have his conversation now, please.

A Mr. Natelli in the meeting -- that interrupted me.

Q Very well. Take your time.

A In the meeting Mr. Natelli also stated that

during the last quarter -- that when we got to the end of a quarter and a contract or two are slipped in at the last minute. He felt that we should try to be more realistic or more conservative in our approach.

Q Very well. Incidentally, have you examined Government Exhibit 16 for identification before?

A Yes, I have.

Q Are these partial or complete verbatim notes?

A They appear to be partial.

Q As far as you can tell, portions then are left out, is that the idea?

A Yes.

Q The portions that are reported, do they appear to you to be the sense of whatever it was that the secretary got, that she got correctly?

A Yes, it does.

MR. VELIE: On that basis I will offer it.

MR. MARTIN: No objection.

MR. STILLMAN: I object to it.

Let me just ask the witness.

VOIR DIRE EXAMINATION

BY MR. STILLMAN:

Q Does that "in attendance" portion reflect accurately who was there?

MR. VELIE: Look at the first entry where it says, "In attendance," and tell us, if you can, if that is an accurate reflection of the persons who were at the meeting?

THE WITNESS: Yes, it is. The reason I am thinking is because I had mentioned that Roger Walther was there and this doesn't indicate it and I didn't indicate that John Stalick was there and this does.

MR. VELIE: What is your best recollection?

THE WITNESS: I would think this is correct, my memory is probably wrong.

MR. VELIE: On that point?

THE WITNESS: On that point, yes.

MR. VELIE: Anything else?

VOIR DIRE EXAMINATION

BY MR. STILLMAN:

Q Can I just ask how long the meeting approximately took?

A I don't remember how long the whole meeting took, but I remember Mr. Natelli was brought in after we had had other items in the meeting.

Q How long did the meeting continue while he was there?

A I can't specifically say.

Q An hour?

A That would be a rough guess, 45 minutes to an hour.

Q Do these four pages summarize what was said in the hour or is it just a portion of what was said in the hour?

A I think they are partial notes of what was taken during the meeting. What is there I think is correct.

MR.STILLMAN: Thank you.

Same objection, your Honor.

THE COURT: 16 is received as to Natelli who does not object, and subject to connection only as to Scansaroli.

xxx (Government Exhibit 16 for identification was received in evidence.)

BY MR. VELIE:

Q During the spring and summer of 1969 was there in preparation by National Student Marketing Corporation and Peat, Marwick & Mitchell a proxy statement?

A Yes, there was.

Q Would you please tell the jury in simple words, if you can, what a proxy statement is?

A A proxy statement is a document that is prepared and sent out to shareholders telling them of some events that the company or transactions which the company wants to transact in the future, but which requires their vote on it.

It explains to them what transactions are to be voted on.

Q Very well.

When you began preparing the proxy statement, was there financial information that was to be included in it?

A Yes, there was.

Q Do you recall when it was first begun which financial statements would appear in it?

A When it was first begun it was intended that the February 28, 1969 financial information be included in that proxy.

Q Any historical information as well?

A Yes.

Q For '68?

A Whatever historical information was necessary would have been included.

Q Including the year '68 and earlier years, is that the idea?

A That is correct.

Q Thereafter was the project changed somewhat to have later financial information put in it?

A Yes, it was.

Q What was to be the latest financial information in the proxy as it was developed?

It was then changed so that the financial information for the three quarters ending May 31, 1969, were to be included.

Q All right.

Who was working on those three quarter --third quarter figures, if you recall?

A It was a lot of different people, but primarily for NSMC it was John Buck and on Peat, Marwick & Mitchell's side, Mr. Scansaroli and Mr. Johnston.

Q Can you tell us what corporate action was contemplated by this particular proxy statement? Do you recall?

A There were a few, but two of them -- one was to increase the number of shares of stock and the second was to acquire four, five companies in which this stock was needed for the acquisition.

Q Sir, calling your attention to August of 1969, was the proxy statement still in preparation in August?

A Yes, it was.

Q Do you recall having an occasion to go to New York City to work on the proxy statement in August of 1969?

A Yes, I did.

Q When was that?

A It was on August 14, 1969.

Q Tell us what happened on that day.

A Well, when I was leaving the office about 7:00 P.M. on the 16th I received a phone call --

Q Did you say the 16th?

A August 14, I am sorry.

THE COURT: Wait a minute. We are in New York.

THE WITNESS: I am not.

THE COURT: Then I am confused. I thought you said that you were in New York on August 14.

Q How did you get to New York, Mr. Kurek?

A I arrived in New York about 10:00 P.M. the evening of August 14.

THE COURT: I see.

Q Tell us what was happening at 7:00 o'clock as you were leaving the office in Washington.

A As I was leaving the office I received a phone call from Mr. Randall who said he wanted me and certain others to meet him at the airport in Washington and fly to New York to work on the proxy.

Q Where was he calling you from, if you know?

A I don't know. He had a phone in his plane, butI don't know if he called from this or not.

8A

A Very well.

What didyou do after you received this telephone call?

A After I received this telephone call, Mr. Stalick was still in the office. He was one of the fellows that he wanted to go to New York. So I told him to meet me at 8 or 8:30, whatever the time was, at the airport. I called Peat, Marwick and Mitchell's offices and spoke with -- I don't know who I spoke with, but Mr. Natelli and Mr. Scansaroli and John Buck of NSMC, I think, was there, and we all met at the airport for Mr. Randall to take us to New York that evening.

Q Did he pick you up?

A Yes.

Q All right.

Did you fly to New York in Mr. Randall's plane, is that the idea?

A Yes, I did.

Q When you got to New York, where did you go?

A We were taken from the airport down to Pandick Press here in New York.

Q What is the Pandick Press?

A Pandick Press is a printing firm, printing company.

Q What was going on at Pandick Press that evening?

In other words, what was the printing firm doing, if you can tell us that?

A They were printing the proxy material that was being prepared.

Q All right.

Who was there besides the people you have already mentioned who came there to Pandick Press?

A When we arrived there were three fellows from White and Case who was National Student Marketing's corporation attorneys, Mr. J. Epley was there and two other fellows, John Provine and David Swope.

Q All right.

What happened when you got to the Pandick Press? What were your assignments or what was it that people were doing?

A Well, the group that I came up with from Washington, we were working on financial data that was to be included in the proxy.

Q Did thiswork include work on the nine-month earnings, that is the third quarter earnings?

A Yes, it did.

Q Did you have occasion to use the telephone that evening?

A Yes, I did.

Q What is your best recollection of the nature of the first telephone call you recall?

A The nature of it was a conversation that I had with Don Jeffers who was the treasurer of International -- Interstate National Insurance Company in which I described to him the theory --

MR. MARTIN: Objection, your Honor.

THE COURT: Mr. Velie, you are going to have to help us here. I don't understand what we want to get into a conversation with some insurance company executive about.

Q Tell us what Interstate National Corporation is.

A Interstate National Corporation was one of the companies that was going to be acquired and their information and figures were being included in this proxy.

Q Was Mr. Jeffers interested in receiving the nine-month figures and other information from the Pandick Press?

A Yes, he was.

Q Did you use the telephone in the presence of other persons?

A I did?

Q Yes.

A Yes, there were other persons in the room.

Q Who was in the room, if you recall?

A As I recall, it was the whole accounting group that

flew up from Washington and maybe Mr. Randall. I'm not --

Q Did you give Mr. Jeffers the information he required?

A I gave him the information he asked of me.

Q Did you fix the time of that telephone call?

A No, I didn't.

Q Could you tell us approximately when that was?

A Yes, it was very late in the evening. It could have been 11 or 12 o'clock because it was 8or 8:30 before we ever left Washington. My best guess, it is very late, 11 or 12 that evening.

Q Do you recall later in the evening any conversation with respect to the Pontiac commitment which is the commitment of approximately a million dollars earlier booked?

A Yes, there was conversation that evening.

Q Tell us what you recall of the conversation, who spoke and what was said?

A I recall that Mr. Natelli did not want to leave the Pontiac commitment in the nine-month figures because there had been no billing, no contract or nothing subsequent to the -- no performance on it subsequent to that April 28 letter that we had here earlier.

Q When was this booked as of?

A It was booked as of February 28, 1969.

Q Can you fix the approximate time of this conver-

sation, Mr. Natelli's statement or statements?

A Well, it was early morning, 1 o'clock, two o'clock. As I recall, he finally said he was not going to allow for it to be -- remain on the books as of May 31, 1969.

Q Did Mr. Randall respond?

MR. STILLMAN: I wasn't sure we had Randall in the room, your Honor, according to my notes.

Q Who was Mr. Natelli saying all of this to?

A Primarily he was talking with me.

Q Did he also talk to Mr. Randall?

A I think at some point Mr. Randall came into the room and was made aware of that.

Q All right.

Then what happened?

MR. MARTIN: Your Honor, I think it may be helpful if we get everybody who was present, the best we can.

THE COURT: Once again, I think first of all, Mr. Kurek, what you have been trying to say is that people were flitting in and out to a degree?

THE WITNESS: To some degree there was people in and out.

THE COURT: I think the best way, subject to correction by Mesrs. Martin and Stillman, would be to simply say when you are asked these things by Mr. Velie, if you

would tell us who was speaking and who, if you know, was sitting there close by or standing or whatever was going on. It is the best I can think of to do, gentlemen.

MR. MARTIN: Fine, your Honor. It is obviously a problem. I think to an extent you cured it.

THE COURT: Can we go along, please, Mr. Velie?

MR. VELIE: Yes.

Q You have set the time, as I understand it, somewhere around 2 o'clock, is that correct?

A In the morning, yes.

Q All right.

Tell us who was on the scene at the point at which the conversation takes place?

A The conversation with Mr. Natelli and myself?

Q Yes.

A All right. Mr. Natelli obviously and me, I believe Mr. Scansaroli and John Buck and Stalick were probably there.

That's my best recollection.

The in and out thing, to make it a little clearer, was printers bringing things in and out, but the accounting group primarily stayed around a round table working. So my best recollection is that the gentleman I just mentioned were there.

Q Tell us that conversation as you recall it.

A Well, it was getting late in the evening, early into the morning, and Mr. Natelli had come to the conclusion that he was not going to allow it -- and he told me -- that Pointiac contract, he was not comfortable with it, that he didn't want it in the May 31, 1969 financial statements. He wasn't going to allow for it to remain booked.

Q Did you respond?

A To Mr. Natelli, I don't think I did. What could I say?

Q All right.

Did Mr. Randall join the conversation or have a similar conversation later in the morning?

A Later in the morning Mr. Randall was in the room, and I don't know whether I told him or whether Mr. Natelli told him, but he was made aware of the fact that Pontiac in the presence of the same group that I just mentioned, was not going to remain on the books.

Q Approximately what time was this?

A This is along about 3:30, 4 o'clock in the morning.

Q All right.

What did Mr. Randall say, if anything?

A Mr. Randall said, "Well, I have an Eastern com-

mitment, an Eastern Airlines commitment. Can we include that in the May 31 statements?"

I don't think I replied and I don't know that anybody replied.

Q What happened?

A What happened was a long about 4 o'clock Mr. Randall placed a telephone call to Mr. Kelly and had me on the phone also, wherein he said, "Dennis, it is early in the morning, take a couple of minutes to wake up."

He said, "You know, the Eastern contract that you are working on" -- he said, "Yes," -- "Or the commitment that you have gotten, would you give Bernie the information."

Dennis Kelly gave me the -- some information on the Eastern commitment over the phone, which I took down.

Q Had you as the controller and chief financial officer of National Student Marketing Corporation ever heard about that Eastern Airlines contract up until that point?

A Not that I can recall.

Q What did you do with the information that you had?

A I brought it back into the room where we were -- the accountants were all working at the table.

Q Later on did Mr. Kelly appear with a document?

A Yes, sometime the next -- that same day, but in the

daylight hours, he did bring a letter.

Q Incidentally, is this the same Dennis Kelly who obtained the Pontiac commitment which was written off that night?

A Yes, it is.

Q I show you Government's Exhibit 18 for identification.

Can you tell us what it is?

A This is a copy of a letter dated August 14, 1969 fr Eastern Airlines to National Student Marketing Corporation.

Q Concerning the Eastern Airlines commitment?

A Yes.

Q Do I understand the date is August 14, 1969?

A It is August 14.

Q Is this a copy of the letter that Mr. Kelly brought to the printers that afternoon, the afternoon of the 15th?

A It would be -- it is a copy of the letter that was sent, brought down.

MR. VELIE: I will offer it.

MR. MARTIN: No objection.

THE COURT: The number of that is what again?

MR. VELIE: 18, your Honor.

MR. STILLMAN: May I just ask who Robert Bushnell is?

THE WITNESS: Is he asking me? Robert Bushnell was another salesman at NSMC.

MR. STILLMAN: Did he do any work on the Eastern account?

THE WITNESS: Mr. Bushnell?

MR. STILLMAN: Yes, sir.

THE WITNESS: Yes, I believe he did.

MR. STILLMAN: Same objection, your Honor, that I previously urged.

THE COURT: I am going to overrule that objection and receive this document as to both defendants.

xx (Government's Exhibit 18 received in evidence.)

THE COURT: Just to make absolutely sure, let me see if I understand you. When Kelly came in during the daylight hours of the 15th was Scansaroli still there with all the other bookkeepers and accountants?

THE WITNESS: That I cannot answer because certain of them left during the day and I don't recall specifically

what time that letter came or whether Mr. Scansaroli was there at that time.

THE COURT: Then I will change my ruling, Mr. Stillman.

MR. STILLMAN: Thank you, your Honor.

THE COURT: I will receive it only subject to connection as to your client. As to Mr. Natelli, he does not object so it will be received as to him.

MR. VELIE: The letter, the copy from which I am reading, appears to be on Eastern Airlines stationery, 10 Rockefeller Plaza. It is dated August 14, 1969. It is addressed to Robert C. Bushnell.

Q You just identified him as another NSMC salesman who worked from time to time on the Eastern account.

A That's right.

MR. VELIE: "National Student Marketing Corporation, 345 Park Avenue, New York, New York.

"Dear Bob.

"This is to confirm our verbal commitment given to you on May 14, 1969. We will accept and utilize during the fiscal year 1970, an amount of not less than $820,000 in National Student Marketing Corporation's services as offered to us in your proposal originally submitted on May 7, 1969.

"We look forward to continued success in our youth

marketing efforts and to our relationship with National Student Marketing Corporation.

"Best regards, Thomas E. Mullen, Manager-Special Markets," and it has initials at the bottom, "TEM:jia."

Q Tell me, Mr. Kurek, this letter makes reference to verbal committment dated May 14 and a proposal submitted on May 7. When did the third quarter end?

A May 31.

Q So that May 14 and May 7 are within the third quarter, is that the idea?

A That's correct.

Q I believe you testified that ~~today~~ day was your first recollection of having heard anything about this sale.

A I have testified to that effect.

Q What time did you finally get back home to Washington, D. C., Mr. Kurek?

A 3 o'clock or 3:30 on Saturday the 16th, I guess.

Q So you were up just about two nights, is that right?

A That's right.

Q Did you hear from anybody with respect to unbilled accounts receivables accounting on the following daylight day, on Saturday the 16th of August?

A Yes, I did.

Q Who did you hear from?

A I heard from a Mr. Oberlander.

Q Who is he?

A He was a staff accountant for Peat, Marwick and Mitchell.

Q How did you hear from him? What did he say to you and what did you say to him?

A He called me by phone in the early or mid-afternoon of the 16th, which was a Saturday, and said that he had just completed a review of NSMC's commitments and unbilled receivables and wanted to discuss the findings of his review with me.

I said to Mr. Oberlander that I had been up for two or three days, my wife is expecting a baby, and that I wasn't driving 30 miles into Washington to review that thing that afternoon, I would see him on Monday, which was the 18th, and go over it.

Q Did you see him on Monday the 18th?

A Yes, I did.

Q Did you speak with him at that time?

A Yes, I did.

Q Didhe have anything with him?

A Yes, he did.

MR. VELIE: May I have a moment to find the spot

in the exhibit.

Your Honor, actually it is ten minutes before the hour and this is a bulky exhibit. It would be a convenient place for me to break or I will go ahead at your pleasure, either way.

THE COURT: I appreciate it, but unfortunately it would create inconveniences for others. Take your time.

MR. VELIE: Very well.

(Pause.)

Q Mr. Kurek, I show you Government Exhibit 13 for identification at Pages stenciled numbers 2687 and 2688. Have a look in there and see if you can identify those pages.

A Yes, I can.

Q I also show you Page 2685, 2684 and 2683. Do you think you can recognize those pages? Take your time.

A Yes, I can.

MR. STILLMAN: I am sorry. I can't hear.

MR. VELIE: I said, "Take your time.."

MR. STILLMAN: I see.

A Yes, I can.

Q What are those pages?

A These are pages of Mr. Oberlander's review of the unbilled receivables.

Q That is Mr. Oberlander's schedule, is that the idea?

A Yes.

Q What did you say to Mr. Oberlander and what did he say to you when he came over with that schedule?

A Well, when he came over he started going through it and I told him, I said, "Let's just stop right here, get somebody that's got some authority to come over and go

through it with me." That's what I said to him.

Q What happened after that?

A After that Mr.Scansaroli came over and we reviewed it.

Q You and Mr. Scansaroli reviewed it together?

A Yes.

Q Did you have a conversation about the items in it?

A Yes. They were looked through, the schedule.

Q Do you recall what you said to him and what he said to you?

A I don't recall the specifics of the conversation other than what was concluded.

MR. VELIE: I offer Pages 2683 through 87 of Exhibit 13 at this time.

MR. STILLMAN: My understanding, your Honor, is that we have entered into a stipulation. This document is a part of the Peat, Marwick work papers, pages from a binder. I understood the whole binder was going to be in evidence. I don't know why we are now starting to pull pages from it.

MR. VELIE: I would be happy to offer the entire binder.

THE COURT: If you have agreed to that, and anybody at a glance can tell that these are PMM work papers, I

don't know what the issue is. If you want to plunk the whole batch in, fine.

I think the important point, however, is to delineate for the record each time you use these -- and I mean this not only for the Government but for each defense counsel -- that you use these numbers.

MR. STILLMAN: They are numbered, your Honor.

THE COURT: Whatever those numbers are called. You see the point?

MR. STILLMAN: Yes, sir.

THE COURT: Fair enough.

MR. VELIE: It is offered on the basis of the stipulation.

THE COURT: I know, but do you agree to offer this whole batch of work papers?

MR. VELIE: Absolutely.

THE COURT: Which we will know as Government Exhibit 13.

MR. VELIE: Yes, sir.

THE COURT: Any objection?

MR. STILLMAN: I certainly have no objection, Mr. Velie, since I signed a stipulation with you saying that these are records made in the regular course of the business.

THE COURT: Peace, Mr.S tillman. There is no

sense arguing battles that have already been established and won.

We will have other battles later where you will have ample time to argue.

xxx (Government Exhibit 13 was received in evidence.)

THE COURT: I take it from what you have already said, Mr. Kurek, that the meeting apparently took place in your office at NSMC in the District of Columbia.

THE WITNESS: That is correct.

THE COURT: That Scansaroli,at your insistence, came over and joined you and Mr. Oberlander, who was also, of course, as you have told us, a PMM personage, correct?

THE WITNESS: I don't recall whether Oberlander stayed there or not. I remember Scansaroli and I discussing it. I don't recall whether Oberlander remained there or was present.

THE COURT: So that what you are certain of today is that once you really got down to the meat of the matter it was you and Scansaroli reviewing these work papers?

THE WITNESS: That is correct.

THE COURT: Thank you.

MR. VELIE: Your Honor, with the Court's permission I am going to read portions of the exhibit.

(Mr.Velie read from Government Exhibit 13 in evidence to the jury.)

MR. VELIE: Your Honor, this would be a convenient place to break.

THE COURT: All right.

Mr. Light and ladies and gentlemen, we will suspend for luncheon and resume at 2:15.

If you could be back in your jury room a minute or two before then --

MR. MARTIN: Your Honor, could we see you for a moment without the reporter?

(Luncheon recess.)

(In open court; jury present.)

B E R N A R D J. K U R E K resumed.

THE COURT: Mr. Velie, you just completed reading a portion of one of the work papers in Government Exhibit 13.

MR. VELIE: Yes, your Honor, that is correct.

May I proceed?

THE COURT: Please do.

DIRECT EXAMINATION (continued)

BY MR. VELIE:

Q Mr. Kurek, prior to my reading Mr. Oberlander's schedule, a portion of Mr. Oberlander's schedule to the jury, you were telling us of a conversation you had with Mr. Scansaroli concerning entries on that schedule.

Now, sir, I believe, if I have it correctly, you said you didn't remember all of the details of that conversation.

Do I have that correctly?

A That is correct.

Q Do you recall how it was left between Mr. Scansaroli and you, that is how you concluded your conversation?

A It was concluded that he didn't feel that the

amounts on the schedule were significant and didn't require that the May 31, 1969 figures would be changed as the result of it.

Q You say the May 31, 1969 figures. Those are figures for that period in the proxy statement which you had just prepared and printed at Pandick Press, is that correct?

A Yes.

MR. VELIE: Your Honor, I have at this time Government Exhibit 25 for identification, a certified copy of the proxy statement. Counsel have been furnished with a copy of the certification and, of course, the final proxy.

I would offer it at this time as a certified copy filed with the Commissioner.

(Pause.)

MR. STILLMAN: I certainly have no objection, your Honor. I think it might be in order if we can just tell the ladies and gentlemen what the nice ribbon and seal are.

MR. VELIE: With the Court's permission I will read from it.

We have, as you see, a document attached to a blue back and a certification on the front which I will now read to you.

"United States of America, Securities and Exchange

Commission, attestation. I hereby attest that attached is a full, true and complete copy of proxy statement filed with this Commission, September 30, 1969, by National Student Marketing Corporation pursuant to the provisions of the Securit ies and Exchange Act of 1934, as amended under file numbers 0-3211 on file in this Commission."

This certification is dated October 11, 1974. It is signed Charles A. Moore, Records Officer. There is a further certification by the Commission certifying that Charles A.Moore is a records officer of the Securities and Exchange Commission.

Counsel, would you like me to read that certification?

MR. STILLMAN: No, thank you.

xxx (Government Exhibit 25 for identification was received in evidence.)

Q I hand you Exhibit 25, Mr. Kurek. And ask you prior to today have you had an opportunity to look at this very certified copy and compare it with your own personal copy of the proxy statement that you had when you worked for National Student Marketing?

A Yes, I have.

Q Do you recognize it as a true and complete copy, as best you could tell?

A Yes, M do.

Q Now, sir, do you know of any entry in that proxy statement disclosing a million dollars of 1968 National Student Marketing contracts written off and deleted from National Student Marketing's own books?

A No, I do not know of any statement to that effect.

Q Do you know of any entry in that document disclosing that a Pontiac commitment of approximately $1 million was also written off and deleted from the books of National Student Marketing Corporation?

A No, I do not know of any.

Q For the convenience of the Court and the jury, are you able to locate the historical summary of earnings for National Student Marketing, which is in this proxy statement? I believe it is Pages 21 through 23, if that is any help to you.

A Yes, I have located that.

Q Does it appear on Page 21 with further explanation of it at Pages 22 and 23?

A Yes, it does.

Q Do you find a footnote at Page 23, numbered footnote D to the consolidated statement of earnings of National Student Marketing Corporation and subsidiaries?

A Yes, I do.

Q Is there an entry there for the 1968 sales of National Student Marketing as originally reported to the public?

A Yes, there is.

Q Is that figure disclosed as it is originally reported?

A I don't have the original.

(Pause.)

End 1A PM

Q All right.

Why don't you have a look at Government's Exhibit 5 for identification, which is the 1968 annual report, and see if you can find the sales figure and tell us if that is the figure originally reported as in that footnote?

A Yes, it is the same figure as in the 1968 report.

Q Is there any disclosure at all that a million dollars of those sales had been at that point written off?

MR. STILLMAN: Objection, your Honor, somewhat repetitious. This is about the eighth time it was brought out now.

THE COURT: Yes, it was, but we will let it stand.

Q Your answer, sir.

A My answer was yes.

Q The sales are the same?

A The sales are the same, but there's no disclosure of a million dollars having been written off.

THE COURT: When you say that you mean both with respect to what follows on page 23 et seq. or are you talking about the entire proxy statement or what?

You say there's no disclosure.

You are saying that there's no disclosure anywhere in the proxy statement?

THE WITNESS: Not to my knowledge there isn't any.

THE COURT: All right. I understand.

Q Is there a statement in this proxy statement of National Student Marketing operation and subsidiaries earnings for the nine-month period ended May 31, 1969?

A Yes, there is.

Q What are the net earnings for National Student Marketing Corporation and subsidiaries as of the nine-month period 1969?

A $702,270.

Q Is it your understanding that the Eastern Airlines commitment and others made up a portion of that $700,000?

A Yes, that is my understanding.

Q Now, sir, did there come a time when Mr. Scansaroli came to work for National Student Marketing?

A Yes, he did.

Q When was that?

A It was in the fall of 1969, about the first of October.

Q Now, sir, shortly following that, in the second week of October, did certain acquisitions become final which had been contemplated in that proxy statement?

A Yes, they did.

Q Do you recall the names of the companies involved?

A Yes. There was a couple of companies, the Arthur

Frommer group, Mail Bag International and Mar-Clay Mills.

Q All right.

Was there a further company whose acquisition was contemplated by that proxy statement?

A Yes, there was.

Q What company is that?

A That was Interstate National Insurance Company.

Q Is that the Interstate National Insurance Company you told us was in contact with you on the night of August 14, 1969 when you were down at the printer's plant?

A Yes, it is.

Q When was that deal to become final, the acquisition by National Student Marketing of Interstate?

A When was it to become final?

Q Yes, sir.

A October 31 of 1969.

Q Do you recall a further requirement having to do with the closing of the Interstate deal with which you had some connection?

A Yes, I do.

Q Would you tell the jury what that is, please?

A Interstate National was to receive a comfort letter from Peat, Marwick, Mitchell prior to the closing.

Q Please tell the jury what a comfort letter is, as

you understand it?

A This particular comfort letter was to do two things.

State that the earnings as reported at May 31, 1969 were correct as best Peat, Marwick could determine and, secondly, that there had been no material deterioration in the earnings or operations of the company subsequent to May 31, and up until about five days before the closing, the finalization of the acquisition.

Q Did there come a time when you saw a draft of a comfort letter, Mr. Kurek?

A Yes.

Q Do you recall when that was?

A Yes, it was on the evening of October the 30th, 1969.

Q All right.

I show you Government's Exhibit 26 for identification and ask you, sir, if you can recognize what that is?

A Yes. This is the draft of that comfort letter that you just referred to.

Q How did you obtain that draft?

A It was given to me by a staff accountant or supervisor at Peat, Marwick and Mitchell.

Q Who was that?

A Bill Cologna.

Q When was that?

A It was on the evening of October the 30th, 1969.

Q Does your writing appear on Government's Exhibit 26 anywhere?

A Yes, it does.

Q What writing is that?

A It is up in the upper righthand corner. I have noted that it was received 10-30-69 and p.m. underneath there.

MR. VELIE: I offer it.

MR. MARTIN: I have no objection.

MR. STILLMAN: May I just ask one question.

xx VOIR DIRE EXAMINATION

BY MR. STILLMAN:

Q Who was present when you received this?

A I don't recall whether there was anyone there besides myself and Mr. Cologna.

MR. STILLMAN: I object to it.

THE COURT: 26 will be received as to the defendant Natelli, who does not object, and subject to connection only as to Scansaroli.

xx (Government's Exhibit 26 received in evidence.)

BY MR. VELIE:

Q Mr. Kurek, do you recall if Mr. Natelli was available on October 30, 1969? What is your recollection of where he was? Do you know if he was at the office that day?

A I don't think he was at the office that day.

Q What is your recollection?

A My recollection is that he had been sick the day of the 30th and the 29th also.

Q What did you do when you received this comfort letter, this draft, Exhibit 26.

A I called one of three people in New York. I don't

recall which one, but it would have either been Mr. Cort Randall, the President, Jim Joy or John Davies.

Q Do you recall what you said?

A Well, I told them that 0-

MR. STILLMAN: Is it them or one of them, your Honor?

I am confused.

THE COURT: Yes, which is it?

A I told whichever one of them it was I talked to that I had received this paper and read to them what was on there and indicated that there were problems with the comfort letter that was needed the next eday.

Whichever one of them that I talked to instructed me to wait until the next day, which was October 31, and bring the comfort letter up to New York for the closing that day.

MR. VELIE: Your Honor, may I read from the comfort letter at this time.

THE COURT: All right.

MR. VELIE: Thank you.

(Mr. Velie read from Government's Exhibit 26 in evidence.)

Q Let me just ask you a point of clarification, Mr. Kurek.

With respect to deferred costs, is it fair to say that deferred costs are costs which the company has actually incurred, that is, spent, but which are not recorded as costs of the period in question, but are rather deferred so that they will be taken down as against income which the company hopes to receive later?

A That's correct.

Q I take it that paragraph number 1 is saying that $500,000 of such costs should be attributed to the period ending May 31, 1969?

A That's right.

Q In short, it was a much more expensive period than previously appeared?

A Right.

(Mr. Velie read from Government's Exhibit 26 in evidence.)

MR. VELIE: I should point this out, as Mr. Stillman, I believe, is trying to tell me.

Q Mr. Kurek, is it fair to say that when this thing was Xeroxed, whoever's handwriting appears above the line here was not perfectly caught, so that we can't tell all of it?

A That's correct.

Q Tell me if this seems to be a fair reconstruction of it?

"In August 1969 management determined that receivables in the amount of $300,000 were uncollectible and were written off."

A That appears to be.

Q Then it goes on.

MR. VELIE: Mr. Stillman, do you have any objection to that?

MR. STILLMAN: Sounds like it to me, sir.

MR. VELIE: Thank you.

Q Mr. Kurek, what is your understanding of the receivables referred to here, what group of entries do you believe that this referred to?

A Well, it primarily refers to the entries that were on the Oberlander schedule that was discussed earlier.

Q So that while this says receivables, apparently the writer intended or might have meant unbilled accounts receivable.

A That's right.

Q Is it fair to say that receivables technically are something a little bit different?

A They were in this company's case.

(Mr. Velie read from Government's Exhibit 26 in evidence.)

MR. VELIE: That completes the reading of the entir

page of Government's Exhibit 26 in evidence.

THE COURT: Incidentally, do you or either one of the defense counsel have an extra copy of that that you can loan me a moment?

MR. VELIE: Yes, your Honor, we do.

MR. MARTIN: Why don't you take mine. I can share Mr. Stillman's.

THE COURT: He says he has an extra.

MR. VELIE: I have an extra.

THE COURT: Thank you very much.

MR. VELIE: I haven't marked that, your Honor. It is 26 in evidence.

THE COURT: Yes, that's right.

Q Mr. Kurek, is it fair to say that the item having to do with acquisition costs states, in effect, that the company had spent a certain amount of money and that the accountant who wrote this piece of paper felt that it should be recorded as an expense of the period which ended the preceding May?

A That's correct.

Q Instead of being a capital expense and entered in some other place in the books, is that correct?

A That's right.

Q Correct me if I am wrong. I have faulty arithmetic

MR. STILLMAN: I am sorry. I didn't hear you.

MR. VELIE: I have faulty arithmetic. You correct me if I am wrong too.

Q Does that come out to $884,000 of downward adjustments to the nine-month period?

A Yes, it does.

Q Is it fair to say, Mr. Kurek, that whatever else this letter does, it doesn't refer to the $1 million previously written off for '68 sales?

MR. STILLMAN: Objection, your Honor. It speaks for itself.

MR. MARTIN: Objection.

THE COURT: Yes, I will sustain that objection.

Q Is there any information in this letter concerning 1968 sales?

MR. STILLMAN: Objection, your Honor. It speaks for itself.

THE COURT: Yes, I will sustain that objection. However, there is lurking a question which could be put here.

MR. VELIE: Yes, your Honor.

THE COURT: You are really asking forhis understanding, you are not asking for the literal wording of the letter, which, as counsel keep telling you is there to be read in any event.

Q Please point to and read, if you can find it, any reference in that letter to the write off of the $1 million in 1968 sales.

MR. STILLMAN: Same objection.

MR. MARTIN: I object, your Honor, as repetitious. He read the whole letter. He said he read the whole letter.

THE COURT: Again, I think what you are trying to ask, Mr. Velie, is not what the letter says but whether or not he ever understood such and such.

Is that what you are trying to ask?

MR. VELIE: Yes, your Honor.

THE COURT: I don't blame counsel for objecting because that isn't what you have been asking. That's why you get these objections.

So reframe it, if you will.

MR. VELIE: Thank you.

Q Did you understand that letter to refer in any way to the $1 million written off of 1968 sales?

MR. MARTIN: I object, your Honor. I hate to object to your Honor's question, but I don't think this man's understanding is a matter that is in issue in this lawsuit.

THE COURT: I am sorry. I don't agree with that.

Second of all, you certainly, however, have every reason or right whenever you see fit to object to a question of mine. I will take that objection in the spirit in which it is made and I will rule against it, so long as you understand. Mr. Kurek, at the time when you saw this draft did you understand this draft in any way to refer to -- now, Mr. Velie.

Q The 1968 sales which were written off in the amount of $1 million?

A I did not understand this to refer to anything that had to do with August of '68 writeoffs.

THE COURT: In your discussions with Cologna did you in any way suggest to him or did he suggest to you that this draft which he presented to you included those '68 writeoffs?

THE WITNESS: I don't recall any of the conversation with Cologna regarding this.

THE COURT: To that effect at all?

THE WITNESS: No, sir.

THE COURT: Or, indeed --

THE WITNESS: I don't remember any conversation regarding this document.

THE COURT: All right.

The next day in New York -- I am getting ahead. Forgive me, Mr. Velie.

MR. VELIE: Yes, your Honor. I have one other question.

Q Did you understand that letter to refer to the $1 million writeoff of the Pontiac contract in any way?

A No, I did not understand it to refer to the $1 million Pontiac.

Q Now, sir, on the day of the closing, October 31, the very next day, did you have occasion to see Mr. Natelli?

A Yes, I did.

Q Tell us how that came about.

A I went over to Mr. Natelli's office at about 9:30 on October 31, 1969. When I got there I said, "Tony, I am supposed to take the comfort letter to New York for the closing."

He says, "It is not ready."

Q Did you say anything further, if you recall?

A Well, I don't remember the specifics of any further conversation. I remember I left there and went back to my office.

Q Do you recall asking him what might be the problem?

A Well, the problem was the wording of the comfort letter.

Q Was that something Mr. Natelli said to you or you said to him or what?

A He had said to me.

Q Do you recall if he said anything else about how that problem had come up or who was working on it or anything of the kind?

A Well, the wording -- he did tell me that the comfort letter was being worked on in Peat, Marwick, Mitchell's New York office and that it wasn't ready for me to take to New York.

Q Did you receive a final comfort letter in Washington, D.C. that day?

A No, I did not.

Q Do you know if it was prepared in Washington, D.C. that day?

A It was not prepared in Washington that day.

Q Did the Interstate closing take place in New York

on that day, if you know?

A Yes, it did.

Q So that Interstate was acquired by National Student Marketing, is that right?

A Yes, they were.

Q Mr. Kurek, you have already told us that you have pleaded guilty to Count 2 of the indictment, the count and the indictment which is at issue right here in this room. Before whom did you plead guilty?

A I pleaded guilty before Judge Tyler.

Q Have you been sentenced yet?

A No, I have not.

Q Do you know who will sentence you?

A Yes, I do.

Q Who will that be?

A Judge Tyler.

MR. VELIE: You may inquire.

MR. STILLMAN: If your Honor please, Mr. Martin and I have agreed that I would proceed first. Mr.Velie tells me he has no objection to that.

CROSS-EXAMINATION

BY MR. STILLMAN:

Q Mr. Kurek, you know that my name is Charles Stillman, do you not?

A Yes, I do.

Q I represent Joseph Scansaroli in this lawsuit, and you know that too, don't y ou, sir?

A Yes, I do.

Q If in the course of my questioning, Mr. Kurek, I put to you any question that you don't understand, please tell me and I will see what I can do to put it in a form that you do understand.

All right, sir?

A Yes.

Q There came a time that you went to work for the National Student Marketing Corporation, is that right?

A That's correct.

Q Prior to that time had you been employed in any capacity which called upon your talents as a financial officer?

A Yes.

Q What employment was that?

A I was employed by a local Washington company prior to going to National Student Marketing Corporation.

Q Was that Thompson's Dairy?

A Yes, it was.

Q Were you the chief financial officer of Thompson's Dairy?

A No, I was the comptroller.

Q Comptroller. In other words, there was somebody to whom you reported, is that the idea?

A There was someone that I reported to.

Q Who was that person, by title? I don't really care what his name was.

A By title? He was the president and treasurer of the company.

Q Who hired you to go to work for National Student Marketing Corporation?

A Mr. Randall, the pr esident.

Q That is the son, right?

A Yes.

Q Cortes W.?

A That's right.

Q Was that through an agency of some kind? How did you and he get together?

A It was through an agency.

Q What was the job that you first took when you went to work with this company?

A The job of comptroller.

Q Was there a chief financial officer above you?

A No.

Q To whom did you report as the comptroller of the company?

A Mr. Randall.

Q I am sorry?

A To Mr. Randall, the president.

Q So that the chain of command in the financial department was Randall to Kurek, is that right, sir?

A That is correct.

Q Did that continue, that is, Mr. Randall being the man to whom you reported, from the time you star ted to work for this company until the time that Mr. Randall left, which was some time in early 1970, if I am not mistaken?

A That is correct.

Q In that interim period of time there was never hired by this company any financial officer above you, is that correct?

A That's correct.

Q Indeed, I believe you have indicated to us that various people were hired in the course of your employment who in a sense were working under you, is that correct?

A That's correct.

Q Among those people was Mr. John Buck, is that right, sir?

A That's right.

Q And for at least a portion of the time that Mr. Buck was employed by the company he served as the comptroller,

am I right?

A You are right.

Q At some point, I believe while Mr. Buck was still there,John Stalick was hired to serve in the accounting departmen tof National Student Marketing Corporation, is that right, sir?

A That's right.

Q I believe it is also correct, is it not, that when John Buck left the company there came a time when John Stalick became the comptroller, is that correct?

A That's correct.

d 2B

Q At the time that you came to work for National Student Marketing Corporation, did you have any idea approximately how many employees it had?

A Yes, it had approximately 20 or so employees.

Q From the time that you were employed, which is I gather April, May, '68 --

A June of '68.

Q Forgive me, sir, June of '68, say, until the end of that year, did that number increase, that is, were additional people hired by this company?

A Yes, they were.

Q Approximately how many?

A I can't guess with any certainty, but it probably doubled. There may have been 40, 35, somewhere in that neighborhood.

Q So in the space of the months from June to the end of the year the company, taking your best recollection, approximately double, is that correct?

A That's correct.

Q In addition to these full time employees, the company also had working for it, did it not, so-called campus representatives?

A It did.

Q Would you be so kind as to tell the ladies and

gentlemen of the jury what these campus representatives meant in the scheme of the way in which National Student Marketing Corporation conducted its affairs?

A The campus representatives were commissioned agents of the company that either distr ibuted material to the students on campus or put posters on dormitory bulletin boards or bookstore bulletin boards or whatever.

They carried out the function of distributing the material on campus and were paid either on a per piece basis for putting it up or on a commission basis in the case of magazine coupons that may be on a bulletin board.

If somebody tore it off and mailed it in to Newsweek, the student would get a commission on it.

They were a part of the distribution network of National Student Marketing Corporation.

Q Is it fai rto say, Mr. Kurek, that the overall plan of growth for National Student Marketing Corporation was designed around the so-called student market, that is, young people attending colleges and I believe high schools as well, is that right?

A That is fair to say .

Q All right. Am I also correct that at some point in time, and maybe even in this period, Mr. Kurek, there

gab-3 Kurek-cross

were as many as six or 700 of these campus representatives who were doing the kind of things that you have outlined for us on behalf of National Student Marketing Corporation?

A There were a great number of them. Whether there was six or 700, I really don't know.

Q Am I off base by saying that there were at least 500?

A That is in the area at least. It was a lot of them.

Q All right. By the time that you came to work for the company it was already a so-called public company, is that right?

A That's correct.

Q And did you learn that its stock had been sold to the public through a brokerage firm inNew York?

A I don't know about the brokerage firm in New York, but its stock had been sold to the public. I knew of that.

Q All right, sir.

When you came to work for the company in June of '68, who were the attorneys at that time?

A The attorneys at that time were a Washington law firm of --

Q Covington & Burling?

A Covington & Burling.

Q We both needed help on that one.

There came a time, did there not, that Covington & Burling was replaced by the firm of White & Case, a firm basically headquartered in New York, is that correct?

A That is correct.

Q Did you ever learn how many lawyers White & Case has on its staff?

A No, I did not.

Q Did you ever learn that it was in the vicinity of 100?

A No, I didn't.

Q Did you ever learn anything about the status of White & Case in thelegal community?

A I did at a point in time.

Q Was the point in time, Mr. Kurek, during the period '68 through '69?

A I am not sure. You want me to tell you what I did know about it?

Q Absolutely.

A I did know that they were a prestigious Wall Street law firm and it wasn't until some time in 1972 or so that I learned that they were as large -- like the sixth largest in the country from newspaper reports, to put what you have been asking me in context.

Q I appreciate that, sir. Thank you.

Mr. Kurek, this annual report, which is Government Exhibit 5 in evidence, I gather was printed up under the company's auspices, is that right?

In other words, together with the financial information there is some kind of textual data about the company, is that right?

A That's correct.

Q You have to keep your voice up. I would like every one --

A That is correct.

Q I know it is hard. We are kind of standing next to each other.

For example, up at the frontthere is a letter from Cort Randall and his father to the stockholders telling them about the company and where they are going, is that correct?

A That is correct.

Q In addition to that the report goes on to describe to the shareholders the kind of work that their company is engaged in and going to be engaged in, is that right?

A That's correct.

Q Did you prior to the time that that document was sent around to the shareholders have the opportunity to

read the textual portion of the annual report?

A I don't think I did read the textual portion of it prior to its being sent to the stockholders.

Q Did you see it after that time, sir?

A Yes, I have seen it after that time.

Q Good.

At the time that you saw it, insofar as it relates to the activities of the company, do you think that it fairly described what National Student Marketing was engaged in in or around the period ending August 31, 1968?

A Mr. Stillman, I don't recall ever sitting down and reading the text.

Q All right.

A So I cannot answer your question.

Q Okay.

A I had seen it, but I never sat down and read it.

Q I appreciate that, sir.

Let me ask you this: Did National Student Marketing Corporation have, to your knowledge, in August of 1968, or by that time, warehouse locations in the various states that are reflected on thismap which appears in the center of Government's Exhibit 5 in evidence?

A I can't answer whether they did or didn't have. It was nothing that I was involved in.

Q In other words, in your capacity as the chief financial officer, you did not learn whether or not the company had warehouses in these various states that have a dot

next to them?

A I did not know whether there were warehouses in those states.

Q There is also an explanation here that has a little star. It says staff office locations and we have little stars around the United States and various places.

Do you know whether or not at that period of time your company or National Student Marketing Corporation had staff offices in various places that have stars there?

A I don't know that they had them in all of the places that there are stars on that map. Some of them I am aware of.

Q Let's see if we can look at a few of the larger areas.

Boston, was that yes?

A There was a Boston outlet.

Q San Francisco?

A Well, the Oakland area.

Q All right.

A Los Angeles I think Siadek was housed at. Either in Detroit or Chicago there was an office, one of the other places. There was one in New York and obviously Washington.

Q Correct, sir. Cincinati, I see Cincinnati has one.

A I don't know whether there was one there or not.

Q All right.

In any event, to the best of your knowledge, the company was conducting its affairs from these various offices in the place that you and I have just explored on this map which appears in Government's Exhibit 5 in evidence, is that correct?

A I know that the company was conducting some of its affairs from the offices that I knew about.

Q I believe you told us that when you came to work for the company one of the first things that you got involved in was the preparation of the financial statements for the quarter ending 5-31-68, correct?

A That's correct.

Q All right.

And that was the third quarter of 1968, is that right?

A That's right.

Q I don't remember whether you told us, was there anybody with whom you were working, any accountant with whom you were working, to prepare these statements for 5-31-68?

A Yes, there was.

Q Who was that, sir?

A There was a gentleman by the name of Michael Sullivan, who was a CPA.

Q Did Mr. Sullivan have ~~have~~ any connections with a firm?

A Yes, he did.

Q Was that the firm of Porterfield and Sullivan or Sullivan and Porterfield?

A I think it is Porterfield & Sullivan, but that's correct.

Q All right.

Was that a firm, to your knowledge, of certified public accountants who had basically their office in Washington, D. C.?

A It was a firm of certified public accountants with offices in the Washington area.

Q All right.

A They may have been in suburban Maryland.

Q Do you know how large or small they were?

A They were not very large. They were a small local firm.

Q Did you know Mr. Michael Sullivan prior to the time you met him in connection with your work at National Student Marketing Corporation?

A No, I did not.

Q Did he come over to the company's offices to begin whatever work that he was doing for the May 31, 1968 state-

ments?

A Yes, he did come to the company offices.

Q Those statements that were being prepared on May 31, 1968, were those, to your knowledge, Mr. Kurek, to be audited statements?

A To my knowledge, they were not audited statements.

Q We have heard a lot about audited statements. I wonder if you could tell us what your understanding was at that time of unaudited statements.

A Unaudited statements are statements that are prepared by the company for distribution, in this case, to the stockholders, without having your public accounting firm come in and make an audit of them.

Q In other words, the public accounting firm does not come in to do a complete check on the company's figures, is that correct?

A That's correct. Could I add something here?

Q If you feel it will help us, sir, please go ahead and do that.

A Yes. The firm of Porterfield & Sullivan were not the company's certified public accountants. They were -- Arthur Andersen and Company were the certified public accountants.

Michael Sullivan was there in a role not as an auditor.

Q Kind of like as an accountant to help you out?

A A consultant, if you will.

Q Right. That's to be distinguished from, for example, Arthur Andersen, who did your statements at -- not yours, but the company's statements at 8-31-67, correct, sir?

A I don't know whether they did them in '67. I know they did work when it went public in February.

Q All right. You are quite right about that, you are quite right.

It was some time in August -- and we will come to that in a moment -- when Peat, Marwick came in and were going to do the figures and certify the statements for 8-31-68, is that correct?

A That's correct.

Q Did you and Mr. Sullivan work together on gathering the information for the May 31, 1968 statements?

A Pretty much, yes, sir.

Q How much time did he devote to the work that he was doing?

A Well, as I can best recall, most days he spent most of the day there working on it, which started some time around -- I remember meeting him on July 4. It was a holiday. He had returned from a vacation. That was the first time I ever met him. And between then and sometime in early August or mid-August, whenever the third quarter statements were published, during normal working days, the week days, he spent a good deal of his time most days in the office. I doubt that he spent all day every day, having other clients, but that's the best way I can answer your question.

Q I appreciate that. I think that does answer it, sir.

Mr. Kurek, yesterday afternoon, Mr. Velie asked you a question about certain of the information contained in the May 31, 1968 statements of National Student Marketing Corporation.

Do you recall that, sir?

A Yes, I do.

Q Do you recall that, Mr. Velie asked -- so there is no mystery, I have a transcript of what happened yesterday and that is what I am looking at now, sir -- do you recall that Mr. Velie asked you --

MR. VELIE: Page?

MR. STILLMAN: Page 144.

Q Do you recallthat Mr. Velie asked you the following questions and you giving the following answers to those questions:

"Q In fact, do you have any knowledge of the approximate size of those commitments booked in the third quarter of 1968?"

Just as an aside, those commitments are the contracts in progress.

"A As I can best remember, they were probably in the 25 to $50,000 category, that area.

"Q A total of between 25 and 50,000, grand total?

A That's right.

Q That is your recollection?

A That is my best recollection."

Do you recall being asked those questions and giving those answers?

A Yes, I do.

Q And in answering the questions that you were asked yesterday were you doing your best to testify to the truth?

A Yes, I was.

F I gather that something happened between yesterday afternoon and this morning which caused you to come before the ladies and gentlemen of the jury and change the testimony, the sworn testimony that you gave yesterday, is

that correct?

A That's correct.

Q What happened?

A Well, it had been almost six years ago since I worked on those. None of the investigations or any of the work that has gone on in the last two or t hree years with respect to these statements involved the May 31, 1968.

When I testified yesterday 25 to 50,000 was my best recollection. Last evening, after the court adjourned, I reviewed copies of the work papers that were prepared for that period May 31, 1969, and found that 25 to 50,000 wasn't right.

Q What happened to cause you to review those financial statements after you gave sworn testimony yesterday, if anything?

A Well, I wasn't sure about it and the paper work is downstairs in Mr. Velie's office and I looked into it.

Q Yousay you weren't sure about it. Did you tell us yesterday that you weren't sure about it?

A I said my best recollection was --

Q I see.

A -- that it was 25 to 50,000. Then after looking into it that was not right and this morning I tr ied to correct it.

Q Whose idea was it that you should go back and look at whatever it is you looked at? And we will come to that in a moment.

A Mr. Velie asked if I -- if it would be helpful for me to look at those records to refresh my memory and I said yes, it would.

Q Did Mr. Velie suggest to you that your testimony was incorrect?

A No, I don't believe Mr. Velie -- in fact, he did not say my testimony was incorrect.

THE COURT: Mr. Stillman, would you brook an interruption at this point for the afternoon recess?

MR. STILLMAN: I would welcome it, your Honor.

THE COURT: We will take a ten minute recess, ladies and gentlemen.

(Recess.)

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(In open court; jury present.)

THE COURT: All right, Mr.Stillman.

MR. STILLMAN: Thank you, your Honor.

Q Mr. Kurek, when we left off before the afternoon recess we were discussing the testimony that you gave yesterday and your testimony this morning with respect to the amount of contracts in progress that were a part of the unaudited financial statements at May 31, 1968.

What I wanted to ask you is this: Did you ever discuss with anyone from the U. S. Attorney's office prior to last night the amount of contracts in progress that was a part of May 31, 1968 financial statement?

A Prior to last night?

Q Right, sir.

A No, I had not.

Q Were you surprised yesterday in court t hen when Mr. Velie asked you on your direct examination the questions and answer that we discussed before, when he asked you whether you had any knowledge of the approximate size of the commitment.

A No, I wasn't surprised.

Q But your testimony is that you and he never discussed that before he asked you that in court yesterday?

A We did not discuss the amount of contracts in progress for that period of May of 1968. That is what I am

saying.

Q The first time then that he asked you a question about the amount was when he asked you in court on the stand, is that right?

A I think so. I don't recall discussing it.

Q Tell me, Mr. Kurek, have you ever been questioned about the size or the amount of the contracts in progress in the May 31, 1968 statements by anyone on behalf of the Securities and Exchange Commission?

A Mr. Stillman, I don't know whether I was or I wasn't. There is SEC testimony that was taken from me in the summer of 1970. I have occasionally reviewed it, but I don't recall whether I was asked the amounts of the May '68 or not.

Q In the summer --

A They may have and they may not have is what I am saying, but I don't recall.

Q All right, sir.

In the summer of 1970 I gather that you were called to testify by the Securities and Exchange Commission concerning certain of the affairs of National Student Marketing Corporation, is that correct?

A That's correct.

Q In the course of your appearing there were you

represented by counsel?

A Yes, I was.

Q Who was that gentleman, sir?

A It was a gentleman by the name of James R. Sharp.

Q While you testified before the SEC Mr. Sharp sat with you?

A Yes, he did.

Q Mr. Kurek, I believe I am correct, am I not, that when you testified before the SEC in the summer of 1970, you were sworn, were you not, to tell the truth to the best of your ability?

A Yes, I was.

Q All right. I am sure it is fair to say that you endeavored to do that, is that right?

A That is fair to say. I have always endeavored to do that.

Q All right.

MR. STILLMAN: Mr. Velie, I am not sure of the exhibit number, but it is the preceding July 9, 1970.

(Pause.)

MR. VELIE: 3502A.

MR. STILLMAN: Thank you.

MR. VELIE: Could you give me a page, please?

MR. STILLMAN: Page 69. Starting about Line 17 is

where I am going to pick up, Mr. Velie.

Q This testimony that you gave before the SEC, Mr. Kurek, did you review it prior to your testifying in this proceeding before this jury?

A I have read over it this past summer, scanning over it. I didn't sit and study it.

Q Did you review any portion of it in your conversations with any representative of the United States Attorney's office?

A I ~~didn't~~ don't know that we have sat down and gone line for line or anything out of the SEC testimony, no.

Q Do you recall that some of the questions being asked of you were being asked by Mr. James W. Ford of the Securities and Exchange Commission, is that right?

A Yes.

Q I believe that is Mr. Ford seated over there, is that right?

A That's right.

Q Do you recall on July 9, 1970, Page 69, Mr. Ford asking you the following question, and I am going to read a portion of your answer now and then I will show you the entire answer, if it is of any help to you.

MR. VELIE: Can I ask you what y ou are going to

read?

MR. STILLMAN: I am going to start right over here (indicating).

MR. VELIE: Bear with me one second.

MR. STILLMAN: Sure, please go ahead.

(Pause.)

MR. VELIE: Go ahead.

Q Question by Mr. Ford:

"Q Were there commitments of this nature placed on the record, the books of the company, the general ledger and included in the financial statements issued in previous periods?"

Mr. Sharp, your attorney interjected and said,"If you know."

And you said, "May 31, 1968, there were a few small contracts used at that time. Prior to May 31, 1968, I don't have knowledge as to whether these various programs of a similar type or not were on the books."

As I say, I am leaving out a part of your answer. I am going to show it to you in a moment, sir.

MR. VELIE: Would you read the entire answer in context, Mr. Stillman?

MR. STILLMAN: The whole answer?

MR. VELIE: Yes.

MR. STILLMAN: I was going to show it to him. I will be happy to read it.

MR. VELIE: The whole answer.

End 5A

Q I will start it again.

"May 31, 1968 there were a few small contracts used at that time. Prior to May 31, '68, I don't have knowledge as to whether these varied programs of a similar type or not were on the books. Between May 31 of 1968 and August 31, 1968, the account execs went out and got these many contracts. In other words, the contracts enumerated on Kurek Exhibit number 2. I think to clarify this, I had indicated earlier that a New York office was opened up in the latter part of February 1968 or the first part of March. I don't know whether there were any contracts in progress of the nature of those on Exhibit 2 at February 28, 1968, but from February to August, there was an increase in the account executive's staff. There were more account executives added in New York and there were branch offices in other parts of the company."

Was that company or country?

A Country.

Q "Other parts of the country opened, too. In answer to your question, to my knowledge, these were generated from May through August."

Then Mr. Belkin, who was also an SEC attorney, said, "In other words, during the three-month period?" You said, "Yes,"

Then Mr. Ford asked you again, "This type of busi-

ness activity was reflected to a minor extent in the May 31, 1968 financial statement, you said?

"Answer. Yes, sir."

Now, do you recall being asked those questions and giving those answers on July 9, 1970?

A If that's my SEC transcript, I was asked those questions and I gave those answers.

Q Those answers were true to the best of your knowledge, is that right?

A Yes, they were.

Q Having now reviewed some of the papers that you reviewed, do you think that you would change the answers that you gave to the SEC on July 9, 1970 with respect to the questions that I just read to you, sir?

A I don't think so. You know, there's more to it than what yo u are just asking.

Q What more to it is there, sir?

A Minor in comparison to what?

Q Let's see if we can go back to this again.

Mr. Ford asked you, "This type of business activity was reflected to a minor extent in the May 31, 1968 financial statement," you said, "Answer. Yes, sir."

In other words, you are saying that you would consider that on a comparative basis, is that the idea?

A That's what I intended, compared to a million, seven or other ~~amounts~~ amounts that were booked subsequent to -- as of August, and subsequent to that, whether it was $50,000, which is what I thought it was in the area of yesterday, or the 260,000 that I was able to refresh my memory on last night, that still is small, and that's the way I meant minor compared to a million, seven or million dollar contracts at one clip.

Q All right.

A This was a number of contracts that made up $260,000

Q Do you know, sir, what percentage of the total income the company reported at May 31, 1968 was represented by this contracts in progress income?

A No, I don't know the percentage.

Q Would it surprise you, sir, if I told you that the number is approximately 32 per cent?

A It wouldn't surprise me.

Q Insofar as you refer to that as minor, I gather you are still referring to minor as it related to the affairs of 8-31-68, rather than the affairs of May 31, 1968, is that right?

A I was comparing minor in the amounts, the dollar values of the contracts at May to the dollar value of the contracts in the period subsequent to that.

Q You weren't comparing the value insofar as May figures related to May figures, in your mind, you were looking at those numbers in May as they related to what happened afterwards, is that correct?

A Afterwards, that is correct.

Q All right.

Certainly $250,000 is a fair amount of money, is that right?

A That's right.

MR. STILLMAN: Mr. Velie, may I see the binder that Mr. Kurek looked at to refresh his recollection, the publicly filed statements?

MR. VELIE: 46.

Q I would like to show you Government's Exhibit 46 for identification, Mr. Kurek, which is, as I understand it, a folder which you ~~may not~~ made up or a looseleaf, which you ~~may not~~ made up of the various filings that were made on or on behalf of National Student Marketing Corporation during the time that you were employed as the chief financial officer, is that right?

A That's right.

Q All right.

This was something that you kept in your office while you were there?

A Yes, it is.

MR. STILLMAN: May I open this and take something out?

MR. VELIE: I have no objection. Are you going to put it back?

MR. STILLMAN: Can we mark this as Defendant Scansaroli's Exhibit A for identification?

MR. VELIE: Mr. Stillman, if you don't mind, since it does come from the Government's Exhibit, why don't we give it a subsidiary number and put it back.

THE COURT: What is it?

MR. STILLMAN: It is, your Honor, a financial report for the period ending 5-31-68.

MR. VELIE: Is 46A a sufficient designation?

MR. STILLMAN: Government's Exhibit 46A, please.

xx (Government's Exhibit 46A marked for identification.)

Q Was I accurate as I described to Judge Tyler a moment ago, Mr. Kurek, that Government's Exhibit 46A for identification, is a kind of small report sent out to the shareholders of National Student Marketing Corporation for the period ending May 31, 1968?

A Yes, that was correct.

Q Who prepared that document?

A The financial information in it was prepared by me

and Michael Sullivan and whoever else helped us on it.

The narative, I don't know who did that. I didn't do it.

Q You did not?

A No.

Q Did you see any of the narative portions before it went out?

A Not that I can recall. The portion of it that I worked on was the financials only.

Q What would you then do with the financials, give them to Mr. Randall, I suppose?

A I think that's the way it went. I don't know who or how it got printed. That would be my best recollection, that the financial information was given to Randall.

Q I hotice here that there is a kind of letter from Randall to the shareholders dated August 6, 1968. That is his signature, is it not?

A It looks like it is his signature.

MR. STILLMAN: Your Honor, I would like to offer in evidence, if you will pardon the expression, Government's Exhibit 46A. I would love to see it have a defendant's letter.

THE COURT: All right, we can give it a defendant's letter.

MR. VELIE: I have no objection, in any event, whatever you want to do.

THE COURT: It comes from Government's Exhibit 46.

MR. STILLMAN: Right.

THE COURT: Those were the public document file which Mr. Kurek said he kept from the days he was at the company. We certainly can mark this, if you prefer --

MR. STILLMAN: It makes no difference. Perhaps I am being silly. We will call it 46A in evidence and that's perfectly okay with me, your Honor.

xx (Government's Exhibit 46A received in evidence.)

THE COURT: Take comfort from the fact that the record will show that you and your client offered it.

MR. VELIE: I have no objection to it. Unless Martin does, I suppose it can come in.

MR. MARTIN: None at all.

Q Mr. Kurek, Government's Exhibit 46A in evidence at the top says "Serving the NSMC youth market, financial report, nine-months 1967-1968."

It says on the front page "Important Developments, Sales for nine-months up 65 per cent to 3.3 million dollars, net earnings more than doubled to $288,390 or," translated on a per share, "41 cents per share."

It talks about an acquisition and some other things.

Did you have any knowledge as of the time that these figures left your hands that there was anything inaccurate in them?

A I did not have any knowledge that there was anything inaccurate in them.

Q Insofar as Government's Exhibit 46A in evidence has those figures on this page that you and I are now looking at, consolidated statement of income, to the best of your knowledge and belief, at that time those figures were correct, right?

A That's correct.

Q Those are what you might call the company's figures, is that right?

A That's right.

Q And these figures, as contained in Government's Exhibit 46A were unaudited, is that right?

A That's right.

Q And you previously told us the difference between audited and unaudited.

I would likeyou to look at Government's Exhibit 46A in evidence and could you tell the ladies and gentlemen of the jury where on that document it tells the reader that there are any contracts in progress being included in the tota sales figure for that period of time?

A There doesn't appear to be any.

Q The fact of the matter is that in making that report the contracts in progress or unbilled receivables were

lumped together with the total operating revenues figure, is that right?

A Yes, it would be in that figure and in other figures.

Q The fact of the matter is there is no footnote which explains that part of those operating revenues are unbilled receivables, is that right?

A That's correct.

Q Mr. Kurek, during that period of time that Michael Sullivan was at National Student Marketing's office and you were working together with him as you have outlined for us, during that period of time did you and Michael Sullivan discuss contracts in progress?

A Yes, there was some discussion of contracts in progress.

Q Was Mr. Sullivan interested in the way in which the company was conducting its affairs as he analyzed the contracts in progress income?

A I don't recall that he was concerned about contracts in progress.

Q The word "concerned" it is really my fault. Do you know whether he was interested in it as an accountant looking over the figures of the company?

A Yes, I -- he was interested in it as an accountant.

Q We know, do we not, that he prepared various work papers in which he analyzed the contracts in progress as they existed at May 31, 1968, is that right?

A That's right.

Q Do I understand that when you said you looked at some papers yesterday or last night or this morning, whenever it was, that the papers you in fact looked at were some of Michael Sullivan's work papers?

A They were some of his and some work papers that I had worked on also.

Q Those were papers which were in the possession of the United States Attorney's Office, is that right?

A That's right.

Q In the course of your doing that, did you have the occasion to see a write up that Michael Sullivan did in which he described the contracts in progress type of accounting which he was doing at May 31, 1968?

A In the course of doing what?

Q Looking through --

A Back in '68 or last night?

Q Let's take last night, first.

A I did not see any write up last night of Michael Sullivan's work papers.

Q Did you see such a write up in or about the summer

of 1968, when Michael Sullivan was at the offices of your company?

A I don't recall whether I did or did not. I may have, but I can't definitely say now whether I did.

MR. STILLMAN: Your Honor, the Court Clerk has been kind enough to give me some exhibit slips and I would like to mark this document, if I might, as defendant Scansaroli Exhibit A for identification. It is a two-page document.

Q I would like to show you this document, Mr. Kurek, and could you tell us first of all whether you recognize the handwriting that appears on Scansaroli Exhibit A for identification?

A No, I don't.

Q Do you know whether or not that is Michael Sullivan's handwriting?

A I don't.

Q Did you --

A I haven't seen his handwriting, longhand, for years

Q You are quite right, sir.

Would you read that to yourself for a moment. I know it is somewhat difficult to read because of the photocopying, but do the best you can. I have a question for you.

I know it is hard to read.

A It is really bad.

Q I am sorry.

A I can't even make out the last line at the bottom and I can't carry it through in context to the first line up here.

Q You are quite right, Mr. Kurek.

MR. STILLMAN: Your Honor, what I would like to do is withdraw that from the witness for the moment. Per-

haps overnight I can get a better copy from the Government.

MR. VELIE: We have a copy downstairs. I will be happy to show it to you, Mr.Stillman, after court hours.

MR. STILLMAN: Thank you very much. I didn't mean to burden the witness with having to try to read this.

Q By the way, Mr. Kurek, at the period ended August 31, 1968, had National Student Marketing received dollars, cash dollars from any of its customers?

A For when, for what period?

Q For the period say between '67 and '68.

A Well, there were dollars flowing in during that period of time. That is as specific as your question was.

Q It was a general question.

A There were dollars flowing in.

Q Those dollars went to pay for the overhead and pay the salaries, is that right?

A It went into the corporate bank account and was used or disbursed from there for whatever.

Q O ne of the sources of income I think came out today when Mr.Velie was asking you about the comfort letter. He referred to some deferred costs. You remember that?

A Yes.

Q Those deferred costs related to so-called

per inquiry programs, is that right?

A That's right.

Q Would you please explain to the ladies and gentlemen of the jury what the per inquiry programs were that National Student Marketing was engaged in?

A The per inquiry program was one wherein National Student Marketing received commissions based on replies that were sent into another company. For instance, we may on the bulletin board have a college bookstore tack up a board with little coupons on it that say if you want to subscribe for a student prize to Newsweek or Sports Illustrated or something tear it off, send it in.

Well, the printing costs of that if they were incurred by NSMC were deferred. It might cost $50,000 to print up the 100,000 of these boards and coupon packets.

Now, no money was ever received yet, but we had to do the printing, and when it was put up on the bulletin boards as the students sent it in to whatever publication in this instance we received a commission on that and were to write off the cost of that program over the period that our commission came in.

That is as simple as I can explain it.

Q I think that explains it well, sir. Part of the accounting theory was an effort to match the dollars you

received with the costs that you had incurred, is that correct?

A That's right, if not vice-versa.

Q By the way, who were some of your customers, what were some of the periodicals you dealt with on these per inquiry programs? Time Magazine?

A Time and Newsweek, I can think of. You know, it is going back. It is a question I haven't been asked and I really don't remember.

Q Did the result of this work cause literally thousands of letters to be coming into the offices of National Student Marketing Corporation in Washington? Didn't that generate lots of paper and activity?

A Well, it did. Not letters so much as the coupons and perhaps their cash remittance or their check being sent in with it, wherein we then transmitted the coupons to the publisher.

Q Do you recall the days that bags of mail, literally bags of mail, came in with these type of items in them?

A There were days when bags of mail to that effect came in.

Q That was one of the things that the company was engaged in during that period of time, is that correct?

A That's correct.

Q There was some testimony with respect to Mr. Dennis Kelly, and I am going to come to more of the details of it later, but I see we are running towards the end of the day and I would just like to pick up a few things with you, Mr. Kurek.

What was Dennis Kelly's position with National Student Marketing Corporation from August of 1969? Was he a salesman?

A In August of 1969?

Q Yes, sir.

A Well, at that time, as I recall, he had a title of vice-president of something. There were many of them. That was his title. As I understood it, though, he was a salesman.

6B

Q And insofar as the company advised its shareholders, it advised them, did it not, that Dennis Kelly was a vice-president in the corporate business development department, is that right?

A If you are reading from an annual report, that is the way they were advised.

Q When did you first begin to call the account executives salesmen?

A I didn't start it. I didn't give him the title of vice-president.

Q But isn't it a fact, sir, that as you operated your company back in '68 and '69 these men who were out attempting to develop contracts and commitments were referred to in the parlance of your business as account executives, isn't that right?

A That is correct.

Q And I don't run from the fact that one of the things that they were doing was selling, right?

A That is what I understood their function to be.

Q And the thing that they were selling was the thing that National Student Marketing was doing, namely, to try to develop these programs in the youth market, is that right?

A That is right.

Q I would like to turn with you, Mr. Kurek, if I might, to the Government Exhibit 5 in evidence, which is, as you know, the annual report for the period ended August 31, 1968, and I would like to review with you one of the entries in that document.

Mr. Kurek, you have a copy of it in your book, I see. I am now turning to it with you. I see you have the name up at the top, there are some notations over here and apparently not relevant to what we are talking about.

I see some numbers over here that I gather you penned in at some point, is that right?

A That's right.

Q What I would like to refer to with you, sir are the footnot es and in particular one footnote.

You are aware, are you not, Mr. Kurek, that a footnote is, among other things, a device to explain certain entries on the financial statement to the reader, is that correct?

A That is correct.

Q All right. You will recall that when Mr. Velie was examining you earlier today he turned to the consolidated balance sheet and he pointed out to you the item that says, "Unbilled receivables and accrued costs and estimated earnings on contracts in progress," and you had the number

one million seven, and there on that line appears Note 3, right?

A That's right.

Q Note 3 is designed to tell the reader, if he wants more information about that item, he should turn to Note 3 which comes later on in the report, is that correct?

A That is correct.

Q Do you have Note 3 in front of you?

A Yes, I do.

Q All right. The first sentence of Note 3 says --

THE COURT: Mr. Stillman, someone loaned me a copy. Note 3 is certainly clearer than whatever that thing is

MR. STILLMAN: I appreciate it, your Honor.

Q The first sentence reads, "During the year 1968, the company's volume of business on fixed fee type arrangement increased substantially."

To the best of your knowledge, Mr. Kurek, at the period when this financial statement was sent to the shareholders, was that sentence accurate?

A When that was sent to the stockholders, was that sentence accurate?

Q Yes, sir.

A To the best of my knowledge, it was accurate.

Q All right, sir.

The next sentence says, "This business" -- obviously the fixed fee-type business, -- "involves employees of the company developing overall marketing and/or advertising programs for clients and/or prospective clients."

To the best of your knowledge, was that accurate?

A Yes.

nd 7A

Q Forgive me. What I plan to do, if you would, sir, is to go through this with you sentence by sentence and ask you that same question with respect to each --

MR. VELIE: Did you forget about the title?

MR. STILLMAN: Is there an objection, Mr. Velie?

MR. VELIE: I wonder whether you were going to read that part to him, too.

MR. STILLMAN: Is he objecting, your Honor?

THE COURT: I couldn't hear him so I wouldn't know.

MR. VELIE: I would like to inquire if Mr. Stillman is going to read the part of this that says contracts in progress --

THE COURT: If he doesn't, you will get a chance to read it yourself. Let's go ahead.

MR. VELIE: Thank you.

Q "The major portion of the work done by the company involves determination of the client's requirements and proposal by the company of an overall program."

Was that accurate, sir?

A That is what I understood it to be.

Q "The eventual implementation of the agreed upon program is carried out by representatives and third parties generally on a fixed commission or charge per piece basis."

Is that right?

A That's right.

Q And the third party's referred to there would be, for example, the printer?

A Could be.

Q That was an illustration of that.

"Owing to the nature of this activity management believes that income is best matched against costs directly connected with the production of this income by recording the estimated gross profit based on the percentage of time incurred to the total estimated time to be incurred by the employees in development of the overall program for the client."

To the best of your knowledge, at that time was that accurate, sir?

A Yes and no.

In the place of the word management, you could insert Randall because I personally objected to that type of accounting, but go on.

Q We are talking about Cortes W. Randall?

A The President.

Q We will come to that, sir.

"Accordingly, all such programs for which a client commitment was considered to exist as of August 31, 1968

have been accounted for on this basis."

To the best of your knowledge, was that so?

A That's so.

Q Finally, "Costs related to development of programs for which no client commitment existed as of August 31, 1968 have been charged to expenses."

To the best of your knowledge, was that so?

A That is true.

Q Lest Mr. Velie not be angry with me, the heading for footnote 3 says, "Contracts in progress", and to the best of your knowledge, was that the title of this particular footnote?

A Yes.

MR. STILLMAN: Your Honor, it is about 5:13. I'll go on.

THE COURT: No, no. You would like to stop, we will stop.

MR. STILLMAN: I would love to.

THE COURT: All right.

Mr. Lights and ladies and gentlemen, we will stand in recess therefore until tomorrow morning, 10 o'clock.

I know that several of you had trouble getting in. See if you can get just a little earlier start. If justone of us isn't here, that means that all of us have to wait,

you see.

With that, we will say good evening. See you tomorrow morning.

(Adjourned to October 24, 1974 at 10 o'clock a.m.)

United States of America

against 74 Cr. 43

Anthony M. Natelli and
Joseph Scansaroli

New York, New York.
October 24, 1974 - 10:00 A.M.

(Trial resumed.)

(In open court; jury present.)

B E R N A R D J. K U R E K resumed.

THE COURT: Good morning. Mr. Stillman.

MR. STILLMAN: Good morning, your Honor.

CROSS-EXAMINATION (continued)

BY MR. STILLMAN:

Q Mr. Kurek, good morning.

A Good morning.

Q Is there anything from your testimony of yesterday which you might have thought about overnight that you wish to correct this morning?

A No, sir.

Q At some point in the day yesterday we were discussing the number of employees that the company had and my recollection is that we were talking about the company

say at the end of 1968 and I believe you testified something to the effect that when you came on board there were some 20, 25, and by the end of the year there were approximately double that.

Do you recall that?

A Yes, I do.

Q I would like to show you what has been marked as Government Exhibit 46A in evidence. This is the report to the shareholders dated August 6, 1968, the letter, that is, is dated August 6, 1968, and it is for the period ended May 31, 1968.

I would like to direct your attention to the fifth paragraph of Mr. Randall's letter reporting to the stockholders and ask you to read that to yourself and tell us whether that refreshes your recollection as to the number of employees the company had at July of 1968.

A Well, it is obviously different from what I said yesterday.

Q I appreciate that, sir, and that is why I wanted you to look at it and see if it refreshed your recollection.

A Do you want me to tell you what I was talking about yesterday?

Q Please do that.

A I was talking about the people that were salaried employees of NSMC in the Washington and New York office.

When I went to work there, there were 15 to 20 people and by the end of the year it was approximately double that. I was not including campus representatives or any people out in the field because they were commissioned people and when I went there in the summer schools were out.

Q All right, sir.

A So we are probably talking about two different things.

MR. STILLMAN: Your Honor, may I just read that particular paragraph to the jury? It is an exhibit in evidence, Government Exhibit 46A.

I am reading fromthe fifth paragraph. This is a letter signed by Mr. Randall on August 6, 1968.

(Mr. Stillman read fromGovernment Exhibit 46A in evidence to the jury.)

Q The fact of the matter is, Mr. Kurek, that during this period from say July of 1968 through the end of 1969 National Student Marketing Corporation was in a period of rapid growth, is that right, sir?

A That's right.

Q And the fact of the matter is that part of the growth plan of this corporation was to grow by acquisition,

is that right?

A Yes and no.

Q Let's take yes first, and then we will take no.

A All right. I never knew of any plan. So when you talk of a plan --

Q All right, that is fair enough.

A What did happen was it did grow through acquisitions.

Q Is it fair to say that Mr. Randall and others would line up various acquisitions, is that right, sir, that is one of the things he was doing?

A That is correct.

Q He had this private plane or company plane, whosever it was, and he was flying around the country meeting with people whose businesses he wanted to acquire for National Student Marketing Corporation, correct?

A That's correct.

Q Indeed, one of the things that you did as the chief financial officer was to look at some ofthese companies, in any event, to see how or what had to be done to bring the financial aspects of those businesses to be acquired into the National Student Marketing family of corporations, is that right, sir?

A Again, yes and no.

Q Let's do it again then. Let's take the yes first and then we will take the no.

A All right. Generally speaking, I got involved in the financial aspects of it after he had agreed in principle or acquired. There were cases where I didn't even know he acquired people until afterwards. So I was not out ahead of time with him trying to machinate the accounting.

It was an after-the-event-took-place type of thing.

MR. STILLMAN: Could you read that back?

(Answer read.)

Q What did you mean by the word "machinate" the accounting?

A Coordinate the subsidiaries or the other companies that he was acquiring, that accounting into our accounting.

Q In other words, businesses were getting together with National Student Marketing Corporation by acquisition or by pooling, whatever, is that right?

A That's correct.

Q One of the things that you as the chief financial officer had to do after all of the legal niceties were worked out among the lawyers and the deal was arranged between Randall and the other side, you had to now coordinate the financial aspects of these acquired corporations with the

existing corporation, is that correct?

A That is correct.

Q The companies that National Student Marketing Corporation was acquiring during this period of time, would it be fair to say that some of them were quality companies, in your opinion?

A Well, yes.

I would say some of them were quality companies.

Q Is it also fair to say that the companies that were being acquired were companies that basically had some available input to the student market?

A Generally speaking, yes.

Q In other words, the idea was to build a family of companies whose basic direction was selling products or advertising products to the student market, is that correct?

A Products and/or services to the student market.

Q Precisely, sir. Thank you.

After the annual report for the year ending August 31, 1968 was prepared and sent out, did you become involved in preparing a financial statement for the company for the period ended November 30, 1968?

A Yes, I did.

Q That would have been the first quarter of the next fiscal year, that is, the year from August 31, 1968 to 1969, the first quarter of that being the period ending November 30, 1968, is that right?

A That's right.

Q In doing that work that was something that was done inside the corporation, is that correct?

A That's correct.

Q Was a report actually prepared, Mr. Kurek?

A Yes.

Q Is there a copy of that report contained in Government's Exhibit 46 for identification, which is this looseleaf which you maintained during the course of your employment?

A I believe there is one in there.

Q I wonder if you could help us out and just show me where the report for the period ended November 30, 1968 is.

MR. STILLMAN: Your Honor, may the record indicate I am opening 46, removing this document, and with the Court's permission, I would like to mark this as Exhibit 46 B for identification.

xx (Government's Exhibit 46B marked for identification.)

Q Mr. Kurek, would you look at Exhibit 46B for identification. This is the financial report for National Student Marketing Corporation for the first quarter of the fiscal year 1969, is that right, sir?

A That's right.

MR. STILLMAN: I would like to offer that in evidence, your Honor.

I do notice that there is some writing, as I look over Mr. Velie's shoulder.

Q Are these notations that you made at some point

after you received that document, sir?

A Yes, they are.

MR. STILLMAN: I have no real interest in the notations, your Honor. I am really interested in the printed portion of the document.

MR. VELIE: I have no objection.

MR. MARTIN: I haven't seen it.

No objection.

THE COURT: Then it will be received, excluding the handwritten matter, is that correct?

MR. STILLMAN: Yes, your Honor.

xx (Government's Exhibit 46B received in evidence.)

MR. STILLMAN: May I just read a portion from the cover, if your Honor please.

Ladies and gentlemen, this is the financial report, first quarter 1969.

(Mr. Stillman read from Government's Exhibit 46B in evidence.)

Q The letter that appears, that is, the letter to the shareholders, that is Mr. Randall's letter, is that right?

A Yes, sir.

Q That was prepared by him or under his supervision, do you know that?

A No, I don't know that.

Q You had no hand in preparing the narrative portion of this document?

A I did not.

Q Directing your attention to the consolidated statement of income which appears on the back for the period three months ended November 30, 1968, and it shows 67, these numbers were put together under your supervision, sir?

A Yes, sir.

Q By people working in the Accounting Department under you, is that right?

A That's correct.

Q I notice over here it says "three months ended 1968 unaudited."

Is it fair to say or am I correct in saying, that the purpose of indicating unaudited is so that the shareholders will know that your outside accounts have not reviewed these financial statements and audited them, is that correct?

A I think that's fair to say, yes.

Q Thank you, sir.

Following the period ending November 30, 1968, when did the corporation next issue any financial statement to its shareholders?

A Prior to that -- subsequent to the first quarter?

Q Yes, sir.

A There would have been a financial statement issued in the spring for the six-months ending February 28 or 29, 1969, whatever date happened to be the last of February that year.

Q That would be the same type of document such as 46A and 46B, sir?

A Yes.

Q Mr. Velie, I think is helping me out here.

This apparently has previously been marked as Government Exhibit 40 for identification. I wonder if you would look at this, sir, and tell us whether that is the report for the period that you have just been telling us about, the next quarter or, at this point, the first half of the fiscal year 1969?

A Yes, it is the report for the first half.

Q I gather if we looked in 46 for identification, your looseleaf, we would find a copy of that as well, I am sure.

A There should be a copy in there.

Q The same format is followed here, there is a letter from Mr. Randall to the shareholders dated May 21, 1969 and some financial statements on the back, is that right?

A That's right.

MR. STILLMAN: Your Honor, I would like to offer

in evidence Government's Exhibit 40 for identification.

MR. VELIE: No objection.

MR. MARTIN: No objection.

xx (Governments Exhibit 40 received in evidence.)

MR. STILLMAN: Notice on 40 for identification, if your Honor please, the name of John Provine appears on there. I believe that the witness has previously identified Mr. Provine as an attorney with the law firm of White and Case.

May I, your Honor.

THE COURT: Surely.

(Mr. Stillman read from Government's Exhibit 40 in evidence.)

Q Just a word or two, Mr. Kurek, the acquisitions that the company made after August 31, 1968.

I believe there was some testimony yesterday or Mr. Velie had you look at the financial statement for the year ending August 31, 1969.

He showed you a footnote contained in that document and asked you to enumerate for the jury certain of the acquisitions that were made during the period after August 31, 1968.

Do you recall that?

A Yes, I do.

Q All right.

Looking at Exhibit 46 for identification, Mr. Kurek, it contains this handsomely bound volume, which is the annual report for the company for the period ended August 31, 1969, is that correct?

A That's correct.

MR. STILLMAN: Perhaps if we could just for the sake of neatness, your Honor, mark this as Exhibit 46C for identification.

xx (Defendant Scansaroli Exhibit 46C marked for identification.)

Q I believe that this footnote that appears on page 47 is the one that we were looking at yesterday, is that

right?

A That's right.

Q The fact of the matter is, is it not, Mr. Kurek, that some of the acquisitions that were made by this company after August 31, 1968 were not paid for with securities of National Student Marketing Corporation, is that right?

A Well, that I'm not sure of. I'm not sure what you are getting at.

Q Why don't we just --

A versus cash?

Q Stock as opposed to some other form of payment.

A Notes and cash?

Q Right.

A I believe that's correct.

Q So that when some of the little businessmen that Mr. Velie referred to, sold their businesses to National Student Marketing Corporation, some of them were paid in cash or notes, is that correct?

A Yes, I believe that's correct. One sticks out in my mind.

Q Which one is that?

A The Guest Pack Corporation.

Q The Guest Pack Corporation?

A Yes.

Q I believe that was one of those that was mentioned yesterday?

A Yes.

Q How much did Guest Pack, the owners of Guest Pack get for their company when they sold it to National Student Marketing Corporation?

A According to the annual report here, the note says $6 million in cash and notes payable, or notes payable.

Q A combination of cash and notes, these people got 6 million American dollars for their company, right?

A I don't know how much they got in cash.

Q Some combination of the two?

A True.

Q All right.

Is it also not a fact, Mr. Kurek, that with respect to some of the other companies that were purchased by National Student Marketing Corporation, these were companies that were owned by a few people rather than a public company whose stock is owned by lots of people, is that right?

They were private companies?

A Except for one that I know of.

Q Insurance companies?

A Yes.

Q We will come to that.

A All right.

Q I'm talking about some of these earlier ones.

A Excuse me. Yesterday the ones that I read out were the acquisitions through April of 1969.

Are those the ones that you are focusing on?

Q Yes, sir. If I haven't made that clear, it is my fault and I apologize to you.

Those are the ones I'm trying to focus on now.

A For the most part they were privately owned corporations, as I remember.

Q To your knowledge, did some of the principals, that is the owners of those companies, some of them actually stayed on with National Student Marketing Corporation in various capacities, is that correct?

A Well, again to be specific, most of them stayed on in the company that they owned in some capacity and there were some exceptions where Roger Walther, for instance, did eventually come to work for the parent company.

His was acquired during that period.

Q Perhaps we can just --

A Because when you say National Student Marketing, I think of the parent.

Q All right.

Maybe we ought to clarify that. I think you are

quite right.

The way this is structured, you have the parent company, National Student Marketing Corporation, right?

A That's right.

Q It goes out and it acquires other companies which are so-called subsidiaries of National Student Marketing Corporation, right?

A That's correct.

Q But insofar as the company itself is concerned, National Student Marketing is a combination of the parent together with the subsidiaries which it has purchased for dollars or stock, right?

A That's correct.

Q As to some of them, the formation, the form of so-called pooling which we come to a little bit later, is that correct?

A That's correct.

Q All right.

Isn't it also true, Mr. Kurek, that some of these gentlemen who sold their companies into National Student Marketing Corporation or whose companies was pooled with National Student Marketing sold some of the stock which they received for their companies?

A That is what I understand, yes.

Q For example, Mr. Roger Walther, who eventually became actively involved in the affair s of the parent, sold some of his stock to the tune of about a million dollars, isn't that right?

A I have heard that. I don't know, in fact, that he did though.

Q By the way, you indicated before that Guest Pack was sold for cash and notes.

Would you look at that document to see what information there is about the Colad Company?

A Yes.

Q That was sold for cash and notes, cash, notes and stock, right?

A That's correct.

Q The gross price there was about $1.950,000?

A That's the amount that is in the column under cash or notes payable.

Q All right. This company Impressions by M, the principal of which was Mr. Joseph Kwiatkowski, do you know that, in fact, that gentleman sold some of the stock that he received for his corporation?

A I don't know, in fact. I heard that, those things, but I didn't see the money, see the stock, you know. I can't verify that transaction.

Q All right. I would like to talk about Government Exhibit 1 for a moment, Mr. Kurek. Let me relieve you of some of these things.

Government Exhibit 1 in evidence, Mr. Kurek, is this document which I believe you indicated that you prepared and has the heading on it "NSMC tentative profit and (loss) year ended August 31, 1968."

Do you recall so testifying?

A Yes, I do.

Q That is what this document is, a document that you prepared?

A It is a copy of a document.

Q Copy of a document, you are quite right.

A Yes.

Q Is this whatyou would refer to as a trial balance?

A No.

Q No. Trial balance is something different?

A Yes.

Q What is a trial balance?

A A trial balance is a listing by account and the dollar -- the associated dollars from the general ledger. You just go page by page, list the account number, the account title and the balance that is in the account. That

is the trial balance.

Q Do I understand, and hopefully this will be helpful to everyone, what happens is at the close of the company's fiscal year, before the auditors come in, the expression goes that the books are closed, is that correct?

A That is correct.

Q And the next thing that happens is that a trial balance is prepared, and the trial balance is simply a listing of what the books show as of the date that they were closed, is that correct?

A That's correct.

Q Is it fair to say based on your experience, Mr. Kurek, that the trial balance is basically a working tool, that is, the starting place for the work that begins after the close of the fiscal year and the closing of the books?

A It is fair to say that.

Q Thank you, sir.

Indeed, isn't it true that after the books were closed for the fiscal year ended August 1, 1968, as the chief financial officer of the company you and your staff were engaged in preparing and causing to be prepared various adjusting entries to begin to reflect the true picture of the company as it existed at August 31, 1968?

A That is correct.

Q All right. Those entries, did they not, Mr. Kurek, cause -- I not being an accountant -- but what I would call kind of ups and down, that is some of the entries raised the worth of the company and others brought it down, is that right?

A Generally speaking, that is fair to say .

Q For example, Mr. Kurek, I believe one of the entries that you yourself were responsible for was a writeoff of some costs which caused a downward adjustment of more than $100,000, is that correct?

A I believe that is correct.

Q Isn't it also true, Mr. Kurek, that when the auditing team from Peat, Marwick came in, they began to suggest additional adjusting entries which had to be made to reflect accurately or fairly the financial picture of the company at August 31, 1968?

A Well, there were adjusting entries made by the auditors.

Q All right. For example, Mr. Kurek, at the time that you prepared Government Exhibit 1, if you look about in the middle of the page there is a column that says PMM & Company entires, and there are various entries which are adjusting journal entries made as a result of suggestion

by the auditing team from Peat, Marwick, Mitchell, correct?

A Correct.

Q For example, the first such entry is a reduction of the worth of the company by causing a writeoff of deferred marketing cost to the tune of another $40,000. right?

A That's correct.

Q And that was actually over and above the writeoff which you had prepared, is that correct?

A That's correct.

Q All right. By the way, Mr. Kurek, yesterday I believe you gave a definition of writeoff, and I tried to make a note of it. I think you said that a writeoff is a deletion from the books.

You did not mean to indicate by that, did you, that the number is actually erased from the books, did you?

A No.

Q Actually what happens is -- why don't you explain it.

A Well, it is a reduction from the accounts of the books.

Q In other words --

A In other words, if you have a building that is

worth $100,000 and for some reason it becomes slum town -- it is a bad example -- if it then is only worth $50,000 and you want to -- we talk of writing off 50,000 to bring it down to its true value. It is not erased out of the books. It is an accounting entry that reduces the account by some amount.

Q In other words, you had one entry which set a particular value. Now what you do is you come along and make a so-called adjusting entry, and when you consider the entry and the adjusting entry, the effect is to write off all or a portion of the original entry?

A That is correct.

Q And both the entry and the writeoff are reflected right in the books, correct?

A That is correct.

nd 2B

MR. STILLMAN: Can I see Exhibit 2 in evidence, Mr.Velie, please.

Q There was some testimony yesterday, Mr. Kurek, with respect to this telegram which appears -- actually it was a telegram and a copy of it -- which appears in Government Exhibit 2 in evidence. This is the telegram that Jack Siadek, this account exec or salesman from California, sends to Mr. Randall concerning -- have I got the right one?

A That is a telex from the company, a xerox of a telex. This is the telegram.

Q Absolutely. You are quite right. I saw "copy" written on here. You are quite right and I appreciate your correcting me on that.

Apparently Mr. Siadek wanted to make this point known to more than one person, so he sent the telegram to yourself, correct?

A That is correct.

Q And he sent the telex to -- I am sorry. You are right.

Apparently Ron Michaels, who is in your New York office, sends a telex to Randall indicating that he also received a copy of the telegram from Siadek, right?

A That's correct.

Q All right. Now we have that straightened out.

What Mr. Siadek was saying, was it not, was that he wanted to be posted on what was happening with respect to the auditors communicating with the clients that he was servicing in California, correct?

A You can interpret it as being that, yes.

Q Let me ask, how did you interpret it when you received it on or about the date it bears?

A The same way. He says no one should be contacted by anyone but myself, meaning Jack Siadek.

Q Do you know whether or not that telegram was the result of contact by the auditors with one of the customers of National Student Marketing Corporation ~~serviced~~ serviced by Mr. Siadek?

A No, I don't know that.

Q Do you recall that one of his accounts was the Shick Company?

A I do recall that one of his accounts was the Shick company.

Q Exhibit 2, Mr. Kurek, has these forms in there which are filled out by the account execs. For example, this one over here signed by Mr. T. O. Allen. I guess you call it a signature.

When were these forms prepared? Do you recall that?

A Yes.

Q When was that?

A When was the form filled in?

Q No. When was the form prepared and xeroxed or mimeographed so that you could distr ibute them?

A Well, I can give you a time frame that I think it was done.

Q All right.

A Somewhere between the 11th, maybe the 12th of October, and certainly before they filled it in, which was the 17th and the 18th they were completed.

Q The fact of the matter -- I am sorry. Did you finish?

A Yes.

Q The fact of the matter is, Mr. Kurek, is it not, that you experienced some difficulty in getting from Mr. Randall the information that you needed with respect to the booking of certain of these commitments for the fixed fee-type business, is that right?

A I did.

Q I believe, and I don't know whether you testified to this, but isn't it true that you first experienced that difficulty at the time that, together with the help of Mr. Sullivan, you were preparing the financial statements

for the period ended May 31, 1968?

A That is correct.

Q And Mr. Randall, after you were getting the numbers together, Mr. Randall brought to your attention that there were some commitments or contracts in New York which you were the office in Washington were unaware of, is that correct?

A Which period now?

Q I am sorry. I am still at May 31, 1968.

A That's correct.

Q After he brought that information to your attention I gather you brought it to the attention of Mr. Sullivan, or Randall told you both at the same time, but you got the information from Randall, and those numbers, to the extent that there were contracts in progress for about $250,000, were included in the financial statement for the period ended May 31, 1968, correct?

A That's correct.

Q When you prepared this tentative profit and loss statement, Government Exhibit 1 in evidence, Mr. Randall had not yet advised you of any contracts in progress that existed, any additional contracts in progress that existed as of August 31, 1968, is that right?

A I was not aware of any.

Q Had you been aware of them at the time that you prepared Government Exhibit 1 in evidence, I gather you would have included them in the report or the tentative profit and loss statement which you prepared, is that correct?

A I would have either included them or made some notation that there were some.

Q All right.

A But I was not aware of any at the time.

Q Precisely. By the way, I think you also indicated that one of the problems that you and Bill Chapman had was the fact that the recor ds of the company were a couple of months behind, isn't that right?

A That's right.

Q And one of the things that you and Chapman and I gather the other men who were hired for the accounting department were doing was trying to bring the recor ds up to date, trying to keep them orderly, trying to keep them current, is that right?

A Trying to establish some records in addition, that is correct.

Q There was some indication yesterday in Government Exhibit 2 in evidence that apparently Bill Chapman had

either filled out or signed or I guess really printed Ganis' name to the information on the Ganis account, exec reports.

Do you recall that?

A Yes, I do.

Q I am certain, but just so the record is clear, there was nothing sinister about that, was there, sir?

A No. He just apparently couldn't get Ganis to sign.

Q Because Ganis was in New York, right?

A Well, so was Chapman.

Q But then Chapman went back to Washington, right?

A Yes, but I don't know why Ganis did not sign. He may not have been in the office on the day we were there. I have no idea. But there is a memo in here from Ganis, u nsigned, that lists these same contracts. Chapman just filled out our accounting form with that information.

Q Bill Chapman is a perfectly decent man who worked for you in the office there, is that right?

A Yes, sir.

i 3A

Q There was some testimony yesterday, Mr. Kurek, with respect to write offs of some of these contracts which occurred in the Spring of 1969.

I am going to come to some of that in more detail in a few moments, but I would like to address our attention to the so-called Ron Michaels contracts. All right?

A Yes.

Q Ron Michaels was an early account exec with National Student Marketing Corporation?

A Yes.

Q Was he there when you arrived?

A He was there when I went to work for the company.

Q Was Michaels for a time almost kind of running the New York office?

A That was my understanding, yes.

Q Do you know the reason why the Michaels contracts were written off?

A Yes.

Q What was that?

MR. VELIE: May we fix a time for this?

Q When did that happen?

A When were they written off?

Q Yes.

A They were written off in April or May of 1969,

effective as of the six-month statement ending February 28, 1969.

Q To your knowledge, that write off was a so-called retroactive write off, is that right, written off to the period ended August 31, 1968, is that right?

A That's correct.

Q Isn't it a fact, sir, that the reason that the Michaels contracts were written off is that the company had discovered that Michaels had been engaged in some -- let's be fair to the man; he is not here -- Michaels had been engaged in some monkey shines?

MR. VELIE: I am going to object to the form of the question because it seems to call for hearsay.

THE COURT: In any event, before we even reach that, I am not sure that the question is quite what the questioner intended.

Please rephrase it.

MR. STILLMAN: I will, your Honor.

Q Isn't it a fact, sir, that Ron Michaels was fired?

A That is my understanding.

Q Wasn't Ron Michaels fired because there was some indication, to your knowledge, there was some indication that Ron Michaels had engaged in some sort of misdealings with the

accounts that he brought into National Student Marketing Corporation?

MR. VELIE: Are we asking for Mr. Kurek's knowledge? If so, first hand, eighth hand? I would like a more precise question.

THE COURT: To the extent I understand this objection --

MR. STILLMAN: Let me do this.

I withdraw it, your Honor.

THE COURT: --I suggest it is well taken as to form.

MR. STILLMAN: All right.

Q To your knowledge, as the Chief Financial Officer of the company, why were the Michaels contracts written off retroactively?

A The reason I am pausing is because I can't answer just the way you asked it.

Q What part of the question gives you some problem and I will see if I can straighten it out.

A All right. I was aware that Ron Michaels was released from the company when he was released. That's in January - February '69.

Q Right.

A Now, the reason for his being released I am not

sure I knew about. I didn't ask. I really didn't care, in early '69.

Q Right.

A The best I have been able to establish when I found out why he was released, was sometime in early 1970, at or about the time some correspondence was taking place with the SEC.

Q Didn't you know that the Michaels contracts were written off retroactively because it was discovered that the contracts never existed?

A That I did know when they were written off.

Q And they never existed apparently because Ron Michaels had been engaged in some sort of improper activity insofar as those accounts were concerned?

A That I am not sure I was aware of in the spring of '69.

Q Did you learn it at some time, sir?

A I learned that in the January-ish period of 1970.

MR. STILLMAN: Excuse me. Can we just come up to the bench for a minute, your Honor?

THE COURT: Do we have to do this now, gentlemen?

MR. MARTIN: I think yes, your Honor.

MR. STILLMAN: Sorry.

MR. MARTIN: It is two minutes.

THE COURT: May I suggest --

MR. STILLMAN: I will hold it.

THE COURT: -- we can really hold it, unless there is a state of emergency.

MR. MARTIN: Your Honor, it will take 30 seconds, but I think it is important.

THE COURT: All right. Come up.

(At the side bar.)

MR. MARTIN: Your Honor, it may be inadvertent, but Mr. Velie is ~~nodding~~ nodding at the witness. I just wanted to ask him not to do that.

MR. STILLMAN: I must say I noticed it too. I am sure it is inadvertent. That is why I am not doing it in front of the jury. Maybe he is agreeing in his head with what the witness is saying.

The fact of the matter is he is nodding affirmatively at certain of these answers and I don't want to call him in front of the jury on it.

THE COURT: It may have been that he was dozing. I am not sure.

MR. STILLMAN: Judge, that is why I am doing it here and not making a spectacle in front of the jury.

THE COURT: I hadn't noticed this was any problem. But then that may be my fault.

Are you nodding?

MR. VELIE: I agreed with the form of the question, Mr. Stillman finally got around to posing.

MR. MARTIN: In any event, thank you.

THE COURT: In any event, gentlemen, I would like to raise something more serious, which I will raise off the record, first.

(Discussion off the record.)

(In open court.)

BY MR. STILLMAN:

Q Yesterday, Mr. Kurek, you indicated with respect to these contracts at August 31, 1968 that there were no monies spent.

Do you recall that testimony?

A Yes, I do.

Q The fact of the matter is, is it not, sir, that there were costs so far as the company was concerned, which it was incurring in the development of these contracts?

A If there were I was not aware upon a contract basis what they were. They were absorbed into general and administrative expenses.

Q You do know, do you not, sir, that the way in which the company proceeded was to allocate to the contracts the portion of the expenses arising from the services of the

account executives.

A The company was allocating portions of the expenses of the account executive?

Q The expenses of paying the account executives.

A I didn't understand the word, you see. Expense what?

Q I am sorry. I must be dropping my voice.

The company had a contract for $1 million with XYZ Company, all right.

A Yes, I don't know that they had a contract.

Q With XYZ? I am sure you realize that I was just using a hypothetical example.

A I understand.

Go ahead.

Q That was not all profit to the company, was it?

A The $1 million?

Q Right.

A As an example?

Q Right.

A No.

Q One of the expenses which the company had was the expense arising from the monies the company was paying to the account executives for the account executives' services.

A That's correct.

Q And those account executives were being paid as they went along, right?

A That's right.

Q So that when you said yesterday there were no monies spent for the contracts you did not meant to leave out the idea that the way in which the company was accounting for these contracts was to include as a cost of the contract the account executive's salary or commissions?

MR. VELIE: Excuse me, your Honor. That is two questions in one.

Would you ask about commissions and ask about draw against commissions or ask about salary separately, please.

THE COURT: Yes.

Sustained as to form. Rephrase it.

Q Wasn't the money paid to the account executives considered a cost of the fixed fee contracts?

A I believe that the money paid to the account executives was charged to an asset account, prepaid commissions or something to that effect. It was not expensed, as I remember it.

Q Okay.

You say expense. You mean written off as you went along?

A Just what I said.

It was charged as a prepaid asset or a prepaid commission and carried as an asset on the books. It was not charged as a salary expense against a contract, as I remember it.

Q Was it considered to be a reduction in the profit that the company would receive on a particular fixed fee contract?

A At the time the money was paid to the account executive? It is very tight, what you are asking.

Q Why don't you explain it.

A I am saying if an account executive got $1,000 draw every two weeks or bimonthly, he was paid $1,000 less his taxes or whatever. That $1,000, as I understand it, was charged to a prepaid commission account, an asset on the

books of the company.

It was not charged when it was disbursed as a salary expense or a commission expense or a cost that went against the contract when it was paid out.

Q Mr. Kurek, I'm not an accountant and I don't want to get into an accounting argument with you because I would lose.

All I want to know is, the company had a contract for a million dollars, a fixed fee contract.

Was that all profit?

A I answered it was not all profit once before.

Q It was expenses against it, right? I know expenses is a word of art in your business, but there was dollars that the company was spending that went to reduce that profit, isn't that right?

A That's right.

Q All right.

During the period following August of 1968, Mr. Kurek, were you trying to keep abreast, keep aware of the status of the fixed fee contract business of National Student Marketing Corporation?

A You said subsequent to August of '68?

Q Yes, sir.

A Well, are you talking about October or December?

Q October, November, December, January, February.

A September, October, I was trying to find out what was going on.

Q How about November?

A November, I was trying to follow up and see what was going on.

Q And December?

A And December I was sending out status reports to try to follow up and get information.

Q And that effort on your part continued into 1969, did it not, sir?

A That's correct.

Q Of course, one of the reasons you needed the information after November of 1968 was so that you could prepare the financial statement to the period ending November 30, 1968, is that right?

A That's right.

Q By the way, some of these contracts that appeared in the 8-31-68 financial statement there was actually some billing on, is that right?

A There may have been a minor part, minor billing.

Q Chrysler Corporation.

A I believe that one was billed.

Q About 120,000?

A 120,112.

Q 112, you have that number fairly precisely, don't you?

A Yes, because it was one of the few that was collected in full.

Q Right. All right.

Following August of 1968, Mr. Kurek, you set out or the company set out to prepare certain forms which you wanted these account execs to follow, is that right?

A That's right.

Q And John Buck, who came on board, was one of the people trying to help you do that, correct?

A Well --

Q If I'm not correct --

A There are time frames in there. John Buck didn't come to work until sometime in the latter part of November. So whatever forms were created around the beginning of October to get the initial things he wasn't involved in. There were forms that we talked about yesterday that were developed subsequent to the December 9 meeting. He could have been involved in the preparation of those.

Q Those are the forms which are contained in Government's Exhibit 7.

You remember yesterday Government's Exhibit 7 was

received in evidence and you recall that Mr. Velie read this letter to the jury, right?

A That's right.

Q As we take the letter off we have these various forms which were prepared by the company in an effort to get the account executives to give you the information you wanted, correct?

A That's correct.

Q For example, the first form, National Student Marketing Corporation account executive time log. This was an effort to get these fellows to give you the time that they spent in working on these clients on a day in and day out basis, right?

A That's right.

Q All right.

Then we have this form which is kind of similar to the one that you had in October of '68, this original status report?

A That's correct.

Q All right.

You have the next one, which was a production manager's monthly budget report to accounting, estimated costs and the month and printing and art and postage, right?

A Yes.

Q All right.

You had this form, which was a monthly status report form? In other words, you wanted to get these fellows to give you this information on a regular systematic basis, is that correct?

A That's correct.

Q You caused, or someone in the company caused these forms to be delivered to the account executives in an effort to keep current on this information, is that right?

A That's right.

Q And that was a problem that you had, that is getting these fellows to toe the mark, isn't that right?

A That's correct.

Q All right.

Do you recall that sometime in mid-December, I guess following the December 10 meeting, that Mr. Bushnell, who was, I guess, a head of the group of the account execus, had a sales meeting around December the 17th or mid-December, calling all of his people together to give out the forms and to get them to report regularly to the Accounting Department, correct.

A That could be correct.

Q Let me show you, Mr. Kurek, this document marked as Scansaroli Exhibit B for identification.

Would you look at this and see if that might refresh your recollection as to whether or not Mr. Bushnell had a meeting of the salesmen to talk about the forms? Does that refresh your memory, sir?

A Would you ask the question again, now, please?

Q All right.

Do you recall receiving a copy of a memorandum that Mr. Bushnell sent to some of the account execs calling them to a meeting to discuss the forms that they were to fill out and prepare in connection with their work? I believe that was at a meeting where someone from Peat, Marwick was to be present as well as yourself?

A I don't remember seeing that memo before now --

Q I see.

A --if that is what you are asking me.

Q You do notice, do you not, that apparently there was a carbon copy of the memo sent to you?

A I'm not saying that I didn't see it.

Q I appreciate that.

A I don't remember it.

Q It is fair to say --

A I don't remember this one as received in the Accounting Department. It looks like it is my copy.

Q I gather, now, it is fair to say --

A I probably saw it, you know, during that time frame, but I don't recall.

Q There was lots of paper crossing your desk in that period of time, was there not?

A For two years there was.

Q From all parts of the country, from various functioning parts of the company, right?

A That's right.

Q Was it the practice of yourself and Mr. Randall, Cortes Randall, to meet regularly, say, on like Saturday to discuss company business?

A We did for a short period of time because he was working primarily in New York and there weren't any committees or anything of that sort. So in order to report to him I tried to meet with him on Saturdays when he came back to Washington where he lived and I was living there.

Q By the way, do you recall at this meeting in December that you told us about, Randall was present, and I believe you told us that Mr. Scansaroli and Mr. Natelli were there and you were discussing the format that the company was to follow, that Randall apparently at that meeting turned to Donald Fergusson, one of the company officials, and saying something to the effect that he wants to be sure, he, Randall, wants to be sure that the information that the accountants need is presented to them?

Do you recall him say ing that in substance?

A What I remember him saying to Donald Fergusson was, "I have heard enough about this contract and commitment material. Don , it is your job. Clear it up. I don't want to be going through another meeting like this in 30 days."

That is the substance of the conversation that I remember.

Q Are you saying that: Don, I don't want Tony telling me in 30 days that he still isn't satisfied, right?

A That's correct.

Q All right. Do you recall as of the early part of 1969 complaining to Mr. Randall of the problem that you were having with getting the information from the account executives?

A Well, I don't know when you are specifically referring to, but I did periodically complain to him about it.

Q Do you recall meeting with him in mid-January of 1969 and registering a complaint at that time?

A I don't recall --

Q It is a long time ago, I recognize that.

A I can't say that I didn't meet with him.

Q You can't say that you did or did not?

A I cannot say that I didn't meet with him, but I don't know what you are specifically referring to.

Q Let me show you this, which I have taken the liberty of marking Scansaroli Exhibit C for identification, and I do promise the clerk that I ~~will~~ will straighten all this out with her at a recess. I show you this memo, apparently from yourself to Randall, dated January 20, 1969, and would you look at it and tell us whether it refreshes your recollection that in or around the middle of January of 1969 you registered a complaint to Mr. Randall that the account execs were not giving you the information that you needed?

A It does refresh my recollection.

Q Apparently you told him that orally and you followed up with a memorandum reminding him of your con-

versation?

A That's correct.

Q All right.

What was your salary at National Student Marketing Corporation, Mr. Kurek?

A At what point in time?

Q Say when you started.

A $14,000 a year.

Q And when you left?

A I believe it was thirty-two.

Q You recall that there came a time when there was some indication, so far as you are concerned, that there was some difficulty with respect to the Clairol commitment and the Cheseborough Ponds commitment? These were the Michaels' contracts, right?

A Right.

Q Do you recallthat Robert Bushnell apparently was u ndertaking to see whether or not those were going to be good or bad?

A I do remember that.

Q Do you recall that you were concerned that if there weren't signed contracts or commitment letters, that those would be written off the books?

A That's correct.

Q Do you recallthat, in fact, some time in the early part of 1969 you wrote to Mr. Bushnell expressing that concern to him?

A Yes.

Q All right. When for the first time in 1969, Mr. Kurek, did you ~~cause~~ cause the writeoff of any commitments or contracts?

A I would think that the first ones were written off somewhere in the April period, in the month of April rather

Q 1969?

A 1969.

Q Were any of those writeoffs reflected in the financial statements which the company issued in February 1969?

A I believe some of them were reflected in that statement.

Q Do you recall approximately how much?

A Not offhand I don't.

Q 250,000?

A That could be right.

Q Tell me, did you cause the writeoff of the Michaels contracts in the February statements?

A Well, I believe I was responsible for following

through and determining that they weren't go ing to ever materialize and certainly played a part in their being writt en off, causing them to be written off.

Q Do you know whether they were written off as of February 28, 1969?

A No, I believe the Michael contracts were written off retroactive to August 31, 1968.

Q Do you recall when that occurred, Mr. Kurek?

A When they were --

Q Physically written off.

A Yes, it was April or May of 1969.

Q Mr. Kurek, did you begin to experience any unhappiness in the March or April period of 1969 with your employment at National Student Marketing Corporation?

A Yes, sir, I did.

Q Did you express that unhappiness to Mr. Cort Randall?

A Yes, I did.

Q Orally?

A Yes.

Q More than one occasion?

A Probably.

Q And the fact of the matter is, is it not, Mr. Kurek, that there came a time in April of 1969 when you

actually submitted a resignation?

A That is correct.

Q Do you recall that, in fact, it was on April 15 of 1969?

A That is probably right. It was the middle of April.

Q Did you change your mind?

A Yes, I did.

Q What changed your mind?

A Mr. Randall.

Q How?

A How?

Q Yes.

A First of all, he tore up the letter of resignation, wouldn't accept it.

Secondly, he said to me that he wanted to know what my discontentment was because if I was discontent and couldn't get along with him and he were to replace me, he would have to replace me with someone of the same temperament, accounting-type of person I think he was referring to, and if I couldn't get along with him, then the next person couldn't, that he wanted to know what I was discontent about. He wanted me to meet with him the following week or so and

put down in writing my discontentment, which I did.

Q Did Mr. Randall then somehow say something to you which satisfied you as to the cause of your discontentment?

A Yes. We had a meeting, went over the memo that I had prepared of my discontentment and assured me and satisfied me that he wanted to work on the problems and iron them out.

Q Was any of that discontentment with respect to the wages that you were earning?

A Not necessarily. I don't believe it was that at all.

Q Did you receive any increase in your income at or about that time?

A Yes, I did.

Q How much was that?

A $7500, I believe.

Q Was that paid out in your salary checks?

A No, I believe it was paid to me in a lump sum.

Q $7500 all at once?

A Yes, sir.

Q All right. Now you decided to stay with the company.

Did Mr. Randall following this meeting give to you the authority to remove from the books of the company

any of the accounts about which you are not sure?

A I don't believe he did. He did not give me a carte blanche authority to write off accounts, commitments.

Q Did he give you the authority to remove commitments after six months if no commitment letter or contract?

A I am not sure that he did. I think that is a proposal that I made to him, and I don't know that that authority or that policy was ever established.

Q Mr. Kurek, I would like to show you what I have marked as Scansaroli Exhibit D for identification and ask you to tell us whether or nor that is a memorandum that you received from Cort Randall on or about the date it bears?

A I don't recall ever receiving this memo.

Q You deny receiving it?

A I am telling you I don't recall ever receiving it.

2nd 4B

Tk 5A

jhb-1 Kurek-cross

MR. STILLMAN: I will offer it, your Honor.

MR. VELIE: I have no objection.

MR. STILLMAN: Your Honor, I do apologize. I didn't make copies . I will do that tonight and have them here.

THE COURT: Before you do, I don't see any need offhand.

MR. STILLMAN: I know. It is just helpful to the Court.

THE COURT: I see no need and I don't wish to burden you.

MR. STILLMAN: Thank you, sir.

MR. MARTIN: No objection.

xxx

(Defendant Scansaroli Exhibit D was received in evidence.)

MR. STILLMAN: Can I just read a portion of it, your Honor?

THE COURT: Sure.

MR. STILLMAN: Mr. Foreman and ladies and gentlemen.

(Mr. Stillman read from Defendant Scansaroli Exhibit D in evidence to the jury.)

BY MR. STILLMAN:

Q As I understand your testimony, Mr. Kurek, you

don't recall having received this memorandum or you deny receiving it, which is it?

A I said I don't recall ever having received it.

Q Do you recall whether or not on April 24 Cort Randall gave you the authority to remove commitments after six months if no commitment letter or contract?

A No, I don't recall him ever giving me the authority to remove contracts.

Q I believe you told us that National Student Marketing Corporation had a finance committee, is that right?

A That's right.

Q What is a finance committee or what was it in National Student Marketing Corporation?

A At National Student Marketing Corporation the finance committee was a committee that consisted of five or six of the officers which met weekly to review and discuss the business and financial situation of the company.

Q Directing your attention to mid-May of 1969, did the finance committee consist then of Mr. Cort Randall, Mr. James Joy, Mr. Roger Walther, Mr.Donald Fergusson, yourself and JohnStalick?

A It did not consist -- it consisted of everybody except John Stalick. I don't believe he was ever a member

of the committee.

Q Did Mr. Stalick ever attend meetings of the finance committee?

A Yes, he did.

Q Mr. James Joy, did he become an officer of the company?

A Yes, he did.

Q Where did he come from? Do you know what his background was?

A Yes. He came from a stock brokerage company.

Q Here in New York?

A In New York, yes.

Q He was with the company starting approximately when, if you recall?

A Some time June or July of 1969.

Q Roger Walther was the man who sold New England travel to National Student Marketing, right?

A Yes, sir.

Q He became active in some of the affairs of the parent company?

A Yes.

Q Donald Fergusson, who was he?

A Donald Fergusson was a vice-president of NSMC.

Q Do you know whether or not Mr. Fergusson had

previously had a business which was either merged into or acquired by National Student Marketing Corporation?

A Yes.

Q In May of 1969 was any member of the financial committee disturbed about the work that the people from Peat, Marwick, Mitchell were doing?

A Which people from Peat, Marwick & Mitchell?

Q Let me ask you this: Do you know whether or not in or about May of 1969 any person whose name I just read to you was of a mind to dump Peat, Marwick as the company's auditors?

A That I don't recall.

Q Do you know whether or not in that period of time any of the persons that I just mentioned felt that the auditors from Peat, Marwick were not maneuverable enough?

A I don't recall that.

Q Do you know whether or not any of those people felt that the company only got one-third of the things it wanted from its auditors?

A That I think I have heard.

Q Do you recall being at a meeting of the finance committee on May 19, 1969?

A Yes, I do.

MR. STILLMAN: I would like to mark this as

Scansaroli Exhibit E for identification. It is a copy, your Honor, of a document which I have taken from Government Exhibit 28 for identification.

MR. VELIE: Excuse me, Mr. Stillman.

(Pause.)

THE COURT: While you are seeking to agree and extract whatever it is you want to extr act, we will take the morning recess.

MR. STILLMAN: Thank you, your Honor.

THE COURT: Ten minutes, ladies and gentlemen.

(Recess.)

5A

BY MR. STILLMAN:

Q Mr. Kurek, would you look at Scansaroli Exhibit E for identification, tell us if you can identify that document?

A It appears to be notes of a finance committee meeting of the 19th of May.

MR. STILLMAN: I will offer it, your Honor. I am showing it to the Government.

MR. VELIE: I have no objection.

MR. MARTIN: I know the document, your Honor. I have no objection.

xx (Defendant Scansaroli Exhibit E received in evidence.)

BY MR. STILLMAN:

Q Exhibit 28 for identification, Mr. Kurek, is a book that has Finance and Executive Committee Minute Book on the front of it. The minutes for May 19, 1969 are not contained in that minute book.

Do you have any idea why that is so? It appears to start with the date of July 7, 1969.

A The only reason that I know of -- I don't know specifically except that it was subsequent to the May 19 meeting that John Davies became secretary of the Finance Committee meeting and I notice that these minutes start with

his signature on them and I know he didn't take these, these were taken by a secretary.

Now, why they are not in there, I don't know.

Q By the way, do you recall being present at this meeting on May 19?

A I remember being present that day at the meeting, yes.

Q Did that take place in New York?

A Yes, it did.

(Mr. Stillman read from Defendant Scansaroli Exhibit E in evidence.)

MR. STILLMAN: Mr. Velie, I would like to read on what is the third page, the bottom of the page.

(Mr. Stillman read from Defendant Scansaroli Exhibit E in evidence.)

MR. STILLMAN: I might say, your Honor, I am reading some of this to just pick up the context.

(Mr. Stillman read from Defendant Scansaroli Exhibit E in evidence.)

Q Farley Manning, is that a public relations firm?

A Yes.

Q Infoplan, was that a firm that was doing some public relations work for the company?

A I believe they were.

(Mr. Stillman read from Defendant Scansaroli Exhibit E in evidence.)

Q Do you recall --

MR. VELIE: Excuse me. That is May 19?

Q Do you recall being at that meeting, sir?

A Yes, I do.

Q Do you recall that conversation taking place?

A Now, I do.

Q To the extent you didn't remember it before, has my reading refreshed your recollection that in fact the conversation that I suggested earlier in my questioning about aggressive, et cetera, you now recall?

A The reading of that has refreshed me, yes.

Q Moving ahead somewhat, Mr. Kurek, to the period involving the proxy statement, I would like to talk to you for a few moments about Douglas Oberlander.

You recall, of course, Mr. Oberlander, an accountant with the Peat, Marwick firm, right?

A That's right.

Q Mr. Oberlander is the one who comes to you with respect to a schedule he prepared on some of the contracts in progress, correct?

A That's correct.

Q Do you know how it came about that Mr. Oberlander

prepared the schedule that he prepared, which was contained in Government's Exhibit 13?

A Yes, I think I do.

Q What is your knowledge on that subject, sir?

A I believe he was doing the review for proxy purposes of the unbilled receivables.

Q Did Mr. Oberlander tell you who had assigned him to do that work?

A I don't recall whether he did or didn't.

Q Would it refresh your recollection if I suggested to you that it was Mr. Scansaroli who assigned Mr. Oberlander?

A I don't recall Mr. Oberlander telling me who told him to do it.

Q In any event, you return from the printer, a tough couple of days, and Mr. Oberlander calls you on a Saturday at home, correct?

A That's correct.

Q And you tell Oberlander "I can't talk to you about this today, see me in the office on Monday," correct?

A To that effect I told him, yes.

Q Did Mr. Oberlander come to your office on Monday to discuss the schedules which he prepared, which are contained in Government's Exhibit 13 in evidence?

A Yes, he did.

Q You know, of course, that those schedules, Mr. Oberlander's schedules --

MR. STILLMAN: May I have the original, please, 13.

Thank you, sir.

Q You know that those schedules are contained in this Peat, Marwick Mitchell binder which reads on the cover "National Student Marketing Corporation, prior years statements, proxy 2-28-69 and 5-31-69, SEC Review, 2-28-69 and 5-31-69?"

You recall that Mr. Velie showed those to you, those work papers of Mr. Oberlander contained in this binder of work papers?

A Yes, I do.

Q When Mr. Oberlander showed you his work papers indicating that he felt that some of the contracts in progress as of 5-31-69 were bad, how did you react?

A I reacted by saying that I would like to review it with somebody who had some authority at Peat, Marwick & Mitchell.

Q Who was that, sir?

Was there any reason why you didn't want to discuss it with Mr. Oberlander?

A Yes.

Q What was that reason?

A A couple of reasons. I was probably irritable from the long week before, weekend call. Doug Oberlander and I didn't quite hit it off personality wise anyway. To start Monday morning with him shoving the stuff in my face probably didn't sit right anyway. That's how it probably came about.

Q Do you recall whether or not when Mr. Oberlander came to your office Monday morning you acted in any way which might have led him to believe that you were upset?

A I might have. I don't recall.

Q Did you tell Mr. Oberlander on that occasion that he had no right to go back three months and say that the financial statements at 5-31-69 were not correct?

A I don't recall saying that to Mr. Oberlander.

Q Do you deny saying that?

A I don't deny it, but I don't really think I said it.

Q Your best recollection is you did not make such a statement?

A My best recollection is I did not make such a statement.

Q All right.

Was it the same day that Joseph Scansaroli came to your office?

A I believe it was the same day.

Q Did you and Mr. Scansaroli then get out to review Mr. Oberlander's work papers, at least those that you had with you that day?

A We did review them.

Q All right.

As a result of that review were any of the contracts which Mr. Oberlander had questioned written off?

A I don't think any of them were written off.

Q Isn't it a fact, sir, that as a result of your conversation with Joseph Scansaroli, contracts with Syntex in the gross amount of over $100,000 were written off?

A I don't recall. I didn't think any were written

off.

Q I would like to show you page 2683 of Government's Exhibit 13 in evidence and I would like to direct your attention, sir, to the entries -- page 2687. Mr. Velie was kind enough to point me to that.

Page 2687, unbilled receivables, 5-31-69. The work paper has a number on it, it has Mr. Oberlander's name and signature and it bears the date of August 16, 1969.

In Syntex this is a contract booked at August 31, 1968, correct?

A That's correct.

Q Now, we have the amounts of the contracts.

Apparently there was more than one -- three it looks like, Syntex College, Syntex Bonanza, Syntex Poster Wave, and the three of them, 50,300, 21,000, gross amount of $120,000, correct, sir?

A That's what the work paper states.

Q The way the work paper seems to be structured, under each of those contracts there are the costs or the cost of those contracts, and those are subtracted out, the way that accountants do it when they subtract, they put carots around it, right?

A Right.

Q The amount here is 59,000, the net amount of

59,000, correct?

A That's correct.

Q This was to be a contract to take place in the spring of 1969 and there's the language that Mr. Velie read to us yesterday, information that Mr. Oberlander took from the contract file, and we come out here to the amount of 59,068. Then over here appears the following words. Could you read that to the jury, please?

A It says, "Written off effective 5-31-69."

Q So the fact of the matter is, is it not, Mr. Kurek, that following your conversation of Joseph Scansaroli, the Syntex contract representing the net profit to the company of about $59,000 was written off.

A That's what this work paper appears to indicate.

Q Is it fair to say that to the extent your prior answer indicated something to the ~~contrary~~ Contrary, you were mistaken?

A I was mistaken. I didn't think any had been written off.

Q All right, sir.

Do you recall, Mr. Kurek, that in some of the work that Mr. Oberlander did, actually there was one adjustment. I think that was an upward adjustment.

Do you recall that?

A I believe I have seen that in his work papers.

Q In other words, after he reviewed the contract file on one of these items -- I believe it was Carnation, -- there was an indication that the client was going to increase the money it was going to spend with National Student Marketing Corporation to the tune of about 15,000 and that represented an upward adjustment of those figures, correct?

A That could be, yes.

Q All right.

In any event, Mr. Scansaroli came over, you and he reviewed the Oberlander work papers, Syntex was written off or was decided that Syntex would be written off, and as to the balance a decision was reached that it was not a material item which warranted any further change in the financial statements at 5-31-69, is that correct?

A That's correct.

Q In making that decision, were you and Mr. Scansaroli so far as you were concerned, engaged in any underhanded conduct?

A Not that I know of.

Q You were both accountants and you were reviewing this matter to make a decision so that you could do the best you could to reflect the financial picture of the company, is that correct?

A That's correct.

Q In or around the time that you spoke to Mr. Oberlander and then spoke to Mr. Scansaroli, there were various meetings of the finance committee, and I believe there were meetings on the 4th, the 11th, the 22nd and the 25th of August.

Do you recall whether or not in any of those meetings there was any discussion of the conversations you had had with Oberlander or with Mr. Scansaroli?

A I don't remember whether there were any conversations.

Q Do you tend to doubt it?

A I don't recall.

Q All right.

Following your conversation with Mr. Scansaroli, which we place some time around the 18th of August -- that's a Monday, August the 18th -- following that meeting, the conversation with him, do you recall a meeting of the Finance company at which there was consideration given to writing off certain of the contracts in progress?

A The Finance Committee?

Q Yes, sir?

A Yes, there was.

Q Do you recall when that was?

A I believe it was in the Finance Committee meeting of August 25, 1969.

Q Government's Exhibit 28, and let's turn to those minutes.

I wonder if you could show me wherein those minutes, the minutes of August the 25, of any conversation concerning that matter, write off of some of those contracts is reflected?

A There doesn't appear to be any recording of the authorization of that write off.

Q Let me show you what I would like to mark as Scansaroli's Exhibit F, and again with the apologies to the Court and Mr.Velie for not having copies with me.

MR. STILLMAN: Let me just show you what it is, Mr. Velie, so you will find your copy of it.

(Pause.)

Q Let me show you Scansaroli Exhibit F for identification?

Is that a memorandum which you caused to be sent to the Finance Committee for the meeting on the 25th so that there would be discussion of the subject of writing off some of the contracts in progress?

A Yes, it is.

Q All right.

MR. STILLMAN: I would like to offer it, your Honor.

MR. VELIE: No objection.

MR. MARTIN: No objection.

xxx (Defendant Scansaroli Exhibit F for identification was received in evidence.)

(Mr. Stillman read from Defendant Scansaroli Exhibit F in evidence to the jury.)

Q Mr. Kurek, although the minutes don't reflect it, the fact of the matter is that at the meeting the committee considered this schedule which you had caused to be prepared, correct?

A That's correct.

Q And the result of it was a committee, finance committee decision to write those off, correct?

A That's correct.

Q Do you know why, Mr. Kurek, that information which you had at August 25 did not affect the conversation that you had with Mr. Oberlander or Mr. Scansaroli the week before on the 18th?

MR. VELIE: I am sorry, I can't understand the question.

MR. STILLMAN: I didn't hear the witness say

a word.

MR. VELIE: I am objecting to the form.

THE COURT: Sustained as to form.

Q On August 25 you decided to write this memorandum to the finance committee, correct?

A Correct. . .

Q Were you possessed of the same information which you put in that memorandum on the 25th the week before, on the 18th?

A I don't think so.

Q In other words, at the time you spoke to Mr. Oberlander and Mr.Scansaroli, you did not have all of the information which you had when you prepared the memorandum, which is Scansaroli Exhibit F?

A I don't think I did.

Q If you had the information, I gather it might have affected the conversation which you were having with Mr.Scansaroli and the conversation that you had with Mr. Oberlander?

A That it might have affected it.

Q Were you having difficulty, Mr. Kurek, communicating your feelings about the contracts in progress to Mr.Cort Randall?

A I had difficulty, yes.

Q Did there come a point in time when you began to --

A Excuse me. I didn't have difficulty in communicating it, I communicated.

Q Right, you are quite right. You had difficulty apparently in making him understand what it is you were saying?

A He had difficulty in understanding. That is the way it appeared.

Q In any event, there came a point when you began to communicate some of your feelings about this to Mr. Roger Walther, who was now active in the affairs of the parent company, is that right?

A That's right.

Q Is it accurate to say, Mr. Kurek, that, for example, in the early part of August of 1969 the company had some awareness of certain contracts which may have been problem contracts but chose not to delete at an earlier time?

A There were contracts that were problems.

Q And, in fact, did you convey to Mr. Cort Randall and to Mr. Walther that fact, namely, that there were contracts that you were aware of insofar as there being a problem in confirming them, but that you chose not to delete

previously?

A Well, I don't know where the problem in confirming them comes.

Q Let me mark this as Scansaroli Exhibit G for identification.

This is a memorandum from you to Mr. Randall and Mr.Walther dated August 7, 1969, with an attachment, and ask you if you can identify the document? I might say there is some red or some kind of writing on there that is mine, that line, something I added. Can you identify the document, sir?

A Yes, it appears to be a copy of a memo of mine to Roger Walther and Cort Randall.

MR. STILLMAN: I offer it, your Honor.

(Pause.)

MR. VELIE: Just one question.

VOIR DIRE EXAMINATION

BY MR. VELIE:

Q There is underlying on here --

MR. STILLMAN: I just said it is mine. The blue, it is mine.

MR. VELIE: Why don't we substitute the unwr itt en copies at a convenient point.

MR. STILLMAN: I think that is a fair suggestion,

Mr. Velie, and I will adopt it.

MR. VELIE: No objection.

MR. MARTIN: I have seen it. No objection.

xxx (Defendant ~~Scanlon~~ Scansaroli's Exhibit G for identification was received in evidence.)

(Mr. Stillman read from Defendant Scansaroli Exhibit G in evidence to the jury.)

BY MR. STILLMAN:

Q There is a schedule that accompanied this memorandum.

Is that a schedule you prepared, sir?

A I don't think I prepared it personally.

Q Someone in your office?

A Yes.

Q Under your supervision?

A Right.

Q You knew, did you not, that the auditors -- by the way, when was it resolved so far as the company was concerned that Peat, Marwick would do the August 31, 1969 audit?

A When was it resolved?

Q Yes, sir.

A They were retained as the auditors in August of '68. They did the '68 audit. I don't know that there was any resolution to be made. I don't see what your

question is.

Q At any meeting in July of 1969, did the finance committee consider the question again of whether or not Peat, Marwick would do the August 1969 audit?

A There may have been some talk about it.

Q Was the talk to the effect of whether they should or should not do it?

A I just considered it talk.

Q Talk by whom?

A Loose talk. I don't know by whom, but I didn't really take whoever was saying what seriously.

Q Cort Randall?

A I don't know who did the talking.

Q Let's look at Government Exhibit 28 for identification. Look at the minutes of -- I think the first entry of the book, July 7, 1969. See if that refreshes your re collection as to who was engaged in the loose talk that you mentioned to us.

A What date did you say?

Q I may have misspoken. July 7, the first one in the book.

A What was your question?

Q Whether that refreshes your recollection as to who was making the loose conversation that you referred to

about whether or not Peat, Marwick should be retained to do the 8/31/69 audit?

A It does not refresh my recollection as to who. It doesn't state who was doing the talking.

Q It does reflect though that the conversation along that line occurred.

A It does reflect that.

Q Who is Mr.Robert Gernert?

A He was an employee in the New York office of NSMC. I can't tell you what he did or what his function was. I didn't really know the fellow.

Q Do you recall speaking to that gentleman concerning the work that the Peat, Marwick auditors were going to do at August 31, 1969 insofar as that work related to the confirmation of receivables?

A I may have. He was one of the late arrivers. I don't remember the fellow too well.

Q Do you recall whether or not you had a conversation with Mr.Gernert in which you told him to alert other officers of the company that the Peat, Marwick confirmation letter would describe the agreements between the clients and NSMC as a contract?

A I may have had that conversation. I don't specifically recall it, Mr. Stillman.

Q Let me show you this document which I would like to mark as Scansaroli Exhibit H for identification.

This is a memorandum dated October 2, 1969, from Mr. Gernert to you, and ask you whether that refreshes your recollection as to whether you had such a conversation with Mr.Gernert? --

A I don't deny that I had a conversation with Mr.Gernert.

It appears to me that I have seen this. That is my writing down there.

6B

Q You recall speaking to Mr.Gernert --

MR. STILLMAN: You want me to stop?

MR. VELIE: Yes. Why don't you give me a second.

MR. STILLMAN: Sure.

MR. VELIE: Thank you.

MR. STILLMAN: You are welcome, sir.

Q Was the conversation that you had with Mr. Gernert designed to create in any way a situation in which contracts would be confirmed that might not otherwise be confirmed?

A No, sir.

Q I gather, assuming that you had it, because you don't recall it, it would have been designed to see to it that everybody was aware of the state of the situation, namely, that these Peat, Marwick conformation letters would be coming out.

A It was that, and if there are any problems, bring them out now, no sense in sending something to a client and having it come back. But it was not designed to do anything other than that.

Q In other words, the idea was that if the arrangement between the client and NSMC was not good enough, then let's not even bother having Peat, Marwick try to confirm it because it will come up unconfirmed, is that the idea?

A Partially.

Q What is the other part?

A The other part is, as I said yesterday, in the December 9th meeting of 1968, it had been stated that by August 31, 1969, contracts had to be firm enough to be confirmed in writing and if they are not firm enough to be confirmed in writing tell me about it, Gernert, we will take them off the books, there is no sense in confirming them, trying to confirm them. That is what I was trying to convey.

Q Who was Donald Freiert, if I pronounce that correctly?

A Donald Freiert?

Q Right.

A He was an accountant in the Washington office of National Student Marketing Corporation.

Q Did you hire him?

A Yes, I did.

Q He had actually been a student of yours in an accounting course that you taught, isn't that right?

A That's correct.

Q Do you recall in the early part of November of 1969 reaching a decision in which you insisted on a program of regular status reports on the contracts and you insisted

that those status reports be on your desk on a regular basis?

A I am confused in what you are asking. Are you sure it is '69 or '68?

Q No, '69.

A Because there were status reports that were instituted prior to that.

Q Do you recall sending a memorandum to Mr. Freiert on or about November 3, 1969 in which you tell him that you want status reports on commitments ready by the fifth day of the month following the month being reported and that you want a copy of each on your desk?

A Well, if that is a memo of mine then I did it.

Q Let me mark it first.

A I don't recall it offhand.

Q Let me mark it first as Scansaroli Exhibit I for identification.

MR. STILLMAN: I will show it to you shortly. You want to see it first?

MR. VELIE: Maybe we can save a little time.

Q Do you recall sending this memorandum to Mr. Freiert?

A I would think I sent it. I haven't read the whole thing, but it appears that it is a memo of mine. My

secretary typed it.

Q You mean the initials --

A LS, yes.

MR. STILLMAN: I offer it, your Honor.

MR. VELIE: No objection.

MR. MARTIN: No objection.

xxx (Defendant SCansaroli Exhibit I was received in evidence.)

Q What was the purpose of your sending that memorandum?

A I scanned it, I didn't read it.

Q Please read it then , because I would like to ask you some questions about it.

THE COURT: I don't understand. It seems to have your initials on it but then it seems to be addressed to you. I don't quite follow that. Also it doesn't seem to have a typical heading on it such as some of these other memos.

THE WITNESS: Well, it doesn't have the characteristics of the other, but it appears to be something I wrote.

THE COURT: What puzzles me is --

THE WITNESS: It looks like it is a copy of a tissue carbon. It doesn't have the to and from printed on there. If we can look at the to and from, it goes to

somebody else.

THE COURT: It seems to be addressed -- I don't say that it is -- from the way I look at it, it seems to be a memo from you addressed to yourself and this gentleman Mr. Freiert, which I suppose could be. I don't know.

THE WITNESS: Well, it is probably from me to Freiert, and that appears to be Stalick's file copy, the check mark down there, which might have been a car bon, and that is causing the confusion at the top.

THE COURT: It isn't dated either.

MR. STILLMAN: It is, your Honor. If I might just, by way of illustration, your Honor, show an original --

THE COURT: That is not what we are looking at.

MR. STILLMAN: Let me ask Mr. Kurek.

THE COURT: The fact is there is no typed date on this, as Mr. Kurek and I both have observed. I don't know whether that is of any significance to you.

THE WITNESS: There is one right here.

THE COURT: Hidden under the tab. I beg your pardon. November 3.

MR. STILLMAN: Right.

End 7A

THE COURT: Do you know whose handwriting that is down there?

THE WITNESS: The handwriting at the bottom --

THE COURT: With other dates, November something.

THE WITNESS: That appears to me to be John Stalick's printing down there.

THE COURT: Which would tend to support your theory that it was his carbon.

THE WITNESS: That it was his carbon.

THE COURT: Thank you. Forgive me, Mr. Stillman.

MR. STILLMAN: Oh, no. It is quite all right, your Honor.

Q Do you recall preparing or causing to be prepared the original of that memorandum and sending it to Mr. Freiert?

A It appears to be a memorandum that I caused to be prepared and sent to Mr. Freiert.

Q What was the purpose of your sending that memorandum to Mr. Freiert?

A Well, the purpose of it appears to be getting status reports on these commitments to me monthly.

Q You wrote what I would characterize -- see if you agree with me -- a strong memorandum insisting on that's the way you wanted it.

A Yes, I would agree with you.

MR. STILLMAN: I won't burden the jury with it, your Honor, because I think we have fairly explained what is in it, unless Mr. Velie would like me to.

Q Mr. Kurek, was there any other subsidiary or operating part of National Student Marketing Corporation which reported any of its income based on the contracts in progress theory of accounting?

A Was there any other subsidiary?

Q Yes, sir.

A I can't recall any, Mr. Stillman.

Q Did National Student Marketing Corporation acquire or merge with a company known as W. R. Simmons and Associates Research, Inc.?

A Yes, I believe they did.

Q Were the statements of that company, if you recall, certified by the auditing firm of Lybrand, Ross Brothers and Montgomery?

A They could have been. I don't recall.

Q Do you know what an 8-K is?

A An 8-K is a form that is reported to the SEC, a report to the SEC. I don't know what specific report it is though.

Q Do you know that public companies are required by law to report various things to the SEC on a periodic basis?

A Yes, I do.

Q And you do know that one of the forms that they are required to file is a thing called an 8-K?

A I do know that.

Q Did you have any responsibility for filing any such form 8-K's during the time that you were associated with National Student Marketing Corporation?

A I would assume I had responsibility, yes.

Q Let me show you this document, which I received from the Commission, and ask if you can identify it.

A I can tell you what I think it is from here.

Q What is that, sir?

A There appears to be, from what is printed here, the financial statements as of May 31, 1969 for the three years then ended for the W. R. Simmons and Associates Research, Inc. and there appears to be another one in here which is a financial statement on Varsity House Incorporated.

Q That was another company acquired, right?

A Yes.

MR. STILLMAN: I offer the whole thing because it is one document. My primarily interest is in the report insofar as it pertains to W. R. Simmons. I think Mr. Velie might like the opportunity to read it, so I can hold my offer until after lunch.

MR. VELIE: May I have a brief voir dire as well?

MR. STILLMAN: Sure.

xx VOIR DIRE EXAMINATION

BY MR. VELIE:

Q Mr. Kurek, do you recall ever having seen any other copies of the material which is copied there, either the originals or copies of the reports that are summarized, photocopied, rather?

A I don't know whether I specifically saw these or didn't. There were so many financial reports and statements coming in I can't say whether I did or did not see it.

THE COURT: Do you want to hold that?

MR. STILLMAN: In fairness to Government counsel, your Honor, I think I should. He would like the opportunity to read it.

MR. VELIE: I would object at this point because this witness doesn't know anything about this particular document and can't identify it other than reading it.

THE COURT: Why don't you take the opportunity to read it and let us know after lunch if you change your mind.

With this interruption, if you don't mind, Mr. Stillman, as I think I warned you, I have to go to a meeting

during the lunch recess and it would be convenient for me, at least, to break now.

Ladies and gentlemen, instead of the usual 1 o'clock we will break now. If you will return a minute or two before 2 o'clock, we will start at 2 o'clock this afternoon.

(Luncheon recess.)

. . . .

AFTERNOON SESSION

2:00 p.m.

(In open court. Jury present.)

B E R N A R D J. K U R E K, resumed.

CONTINUED CROSS EXAMINATION

BY MR. STILLMAN:

MR. STILLMAN: During the luncheon recess, I marked for identification Scansaroli Exhibit J, which was the 8-K filing for National Student Marketing filed with the SEC, November 14--received by the SEC December of 1969.

I showed it to Mr. Velie. He tells me he has no objection to it.

MR. VELIE: That's correct, your Honor, I have no objection.

(Defendant Scansaroli Exhibit J for identification. received in evidence.)

MR. STILLMAN: I would just like to read a brief portion, your Honor, to the jury.

Q Before I do that, Mr. Kurek, the firm Lybrand, Ross Brothers and Montgomery, do you know them to be a large firm of certified public accountants?

A I knew them at that time to be a large certified public accounting firm.

Q W. R. Simmons and Associates Research, Inc. is a

company which was acquired by National Student Marketing Corporation?

A That's correct.

(Mr. Stillman read from Scansaroli Exhibit J in evidence to the jury.)

Q By the way, Mr. Kurek, you were aware in, say, December of 1969 at least that your outside accountants, your auditors, could not prepare financial statements and then audit them, is that correct?

A In 1969?

Q Yes, sir.

A Yes.

Q That was something you were aware of?

A I'm sure I was aware of that.

Q There was introduced as a Government's exhibit so-called draft comfort letter, Government's Exhibit 26.

Mr. Kurek, I show you what is Government's Exhibit 26 in evidence and I believe you described this as something you received on October 30, 1969 in the P.M., is that correct?

A That's correct.

Q How did you define P.M., that is, what is your best recollection of when you received that document?

A My best recollection is that it was early evening.

Q Is it your testimony, sir, that the first time that you learned there was to be any difficulty with the comfort letter was on the early evening of October 30, 1969?

A I don't think that I have testified that this was the first time.

Q All right.

A I testified that that's when I received this letter, this draft of the proxy.

Q All right, sir.

A Of the comfort letter.

Q I'm sorry.

Q What is your best recollection of the first time that you learned there would be any difficulty with respect to the comfort letter that the company required for the Interstate closing?

A From records that I have reviewed recently, I think it was around October the 27th or so. There is a telephone conversation that I have made notes of that are available. Whatever the date of that memo or that telephone conversation is when I remember the first problems regarding the comfort letter.

Q That was a phone conversation that you had with Mr. Natelli at 9:45 in the morning on October the 27th, is that right?

A That's right.

Q So there's no mystery between us, are those the notes you are referring to (handing)?

A Yes, it is.

Q Was it in the course of that conversation, Mr. Kurek, with Mr. Natelli --

MR. VELLI: Excuse me, Mr. Stillman. Why don't we mark that rather than call it those.

MR. STILLMAN: All right, marked as Exhibit K for identification, the notes that I just exhibited to the witness, if your Honor please. It bears at the top 10-27-69, per phone conversation, w/, meaning with, Natelli, 9:45 a.m.

Q That's the conversation that you and I were just talking about, right, sir?

A That's correct.

Q All right. When you learned that on October 27th what, if anything, did you do with the information you had received from Mr. Natelli?

A I can't specifically recall what I did, but I am sure that I talked with someone above me that had something to do with the acquisition, either Randall, Joy or Davies, who were handling the Interstate acquisition.

Q Did you feel at that time that that was the kind of information that you should bring to the attention of the finance committee of National Student Marketing Corporation?

A I don't know whether I did or didn't. I don't know whether there was a finance committee meeting coming up.

The 31st, as I remember it, was a Friday of October, so, let's see, the 27th could have been a Monday.

The finance committee meetings were generally on a Monday. I don't know whether it was at a time that we had a finance committee meeting coming up. I don't really recall whether it went to a finance committee or not.

Q Let me show you 28 for identification, the minute book of the finance and executive committee, and direct your attention to the minutes of the executive committee held on October 27, 1969, and ask you if you were in attend-

ance at that meeting?

A The minutes indicate that I was in attendance.

Q Was it the fact, sir, that the meetings were held in New York?

A Yes, they were.

Q I believe that those minutes reflect that a Mr. Cameron Brown was present at the meeting, is that correct?

A Yes, it does reflect that.

Q Who is Mr. Cameron Brown?

A He was the president of Internate National Corporation.

Q A company about to marry together with National Student Marketing Corporation?

A A company to be acquired.

Q All right.

Did you tell the people who assembled at that meeting, the executive committee, of your conversation with Mr. Natelli at 9:45 that morning?

A The minutes don't indicate that it was brought up, that I can read, that I see here.

Q Nothing in the minutes.

Do you have any recollection of telling him that?

A I don't know whether it was discussed or not, Mr.Stillman. It could have been, it may not have been.

Q It was, was it not, an important piece of information?

A Yes, it was an important piece of information.

Q It was a piece of information that could conceivably affect whether or not these two companies would join together, isn't that correct?

A It could conceivably affect that, that is true.

Q So far as you can tell, it is not in this minute book?

A That's right.

Q You testified about some things that occurred at the printer, Pandick Press, on or about August 14, I believe, 1969.

Do you recall that, sir?

A Yes, I do.

Q All right. I believe there was some questions that Mr. Velie asked you concerning whether or not at that time you were gathering together information which related to the company's financial statements for May 31, 1969, correct?

A He did ask that.

Q The fact of the matter is, is it not, Mr. Kurek, that prior to being at the printer on August 14th, there was already a draft of the proxy statement which had been

circulated to various people who were concerned with this matter, isn't that right?

A That I am not sure of. There could have been a draft. I don't know about the circulation.

Q Do you recall whether or not prior to August 14 you received a copy of that draft from Mr.John Davies and whether or not Mr. John Davies solicited any comments that you might have with respect to that proxy statement?

A No, I don't remember that.

Q Let me show you what I am marking as Scansaroli Exhibit L for identification, a memorandum from Mr. John Davies dated August 11, 1969, and ask you whether you can identify that memorandum (handing)?

A This appears to be a copy of something that I have seen because I think the writing on there is mine.

MR. STILLMAN: I will offer it, your Honor, showing it to the Government.

(Pause.)

MR. VELIE: No objection.

MR. MARTIN: No objection, your Honor.

xxx (Defendant Scansaroli Exhibit L for identification was received in evidence.)

MR. STILLMAN: Your Honor, do you wish to see

it before I proceed?

(Pause.)

(Mr. Stillman read from Defendant Scansaroli Exhibit L in evidence to the jury.)

Q Does that refresh your recollection that DAvies prior to August 14th sent to you a copy of the first draft of the proxy statement?

A That would indicate that he did.

Q Do you recall whether or not you had any suggestions for Mr. Davies in response to the memorandum?

A I don't. If I did I am sure I wrote them back to him, but I don't recall.

End 1B

Q I would just like to go to Pandick Press for a few minutes.

What was it like at the printers when you were working there through that night?

That is not a fair question. Let me withdraw it.

Would you say that the atmosphere at the printers was hectic?

A Yes, I would say it was hectic.

Q How many people were there in the same room? I realize that people were coming in and out, but at any one time would it be fair to say that there were at least three White & Case lawyers, yourself, Buck, John Stalick, Joe Scansaroli, Mr. Natelli, Randall there for a period of time, nine, in the same room, correct?

A There could have been nine at any one time.

Q One of the things that the accountants were doing was what they call footing, that is, adding up the numbers as these pages came off the presses to make sure that the printer had not made an error in printing the numbers, correct?

A That's correct.

Q They had adding machines with which they were working to make that happen? Correct?

A Correct.

Q At the same time were any of the lawyers sitting

around doing what they call proofreading, that is, one reading to the other to make sure that there were no typographical errors in the document?

A I imagine they were. They were in the room.

Q Was the printer serving food to the people assembled in the course of this evening?

A Yes, they did.

Q As a matter of fact, these printers are fairly lavish in what they provide for people working through the night, isk't that right?

A Well, lavish compared to what? It was comfortable, yes.

Q It was in the course of this set of activities that you had some kind of a phone call with someone in Chicago, is that correct?

A That's correct.

Q Do you know what a representation letter is, Mr. Kurek?

A Yes.

Q What is that?

A From an accounting firm or to an accounting firm?

Q Yes, sir.

A It is a letter wherein the officers sign off saying that whatever they are representing is true to the best of

their knowledge.

Q In other words, the company -- is this fair to say -- the company through certain of its officers is representing to the auditors that to the best of their knowledge the things reflected in the representation letter are accurate, is that correct?

A That's correct.

Q Did you have occasion as an officer of National Student Marketing Corporation to sign a representation letter with respect to any of the financial statements that were prepared during the time that you were employed by the company?

A Yes, I did.

Q You signed one for the August 31, 1968 statements?

A I signed one for that period, yes.

Q That was also signed by Mr. Cort Randall, correct?

A That's correct.

Q Do you recall being asked to sign a representation letter with respect to the proxy statement?

A I am not -- I was asked to sign a representation letter, but I don't know that it was to the proxy statement or the comfort letter.

Q You may be quite right.

A Because there were changes made to what was given to me.

Q We will come to that in a moment, sir. The fact of the matter is that a representation letter was presented to you for signature in connection with the comfort letter, correct?

A Yes.

Q The fact of the matter is, is it not, that you refused to sign theletter in the form in which it was presented, correct?

A That's correct.

Q Did you call anybody concerning the comfort letter that had been presented to you?

A Yes, I did.

Q Whom did you call, sir?

A I called my attorney's office.

Q Did you speak to your attorney? And please don't tell us what you said to him and what he said to you because that is a privileged matter.

A I spoke to one of the attorneys working in the law firm.

Q Following that conversation with one of the attorneys working in your attorney's law firm did you go back and speak to whomever it was that had brought the repre-

sentation letter for you to sign?

A Yes.

Q That was whom, sir?

A I believe it was Mr. Cologna.

Q Of Peat, Marwick, Mitchell?

A Yes.

Q What did you say to Mr. Cologna concerning the representation letter following this conversation with your attorney?

A Well, when I discussed it with my attorney he suggested changes in the letter, which I made while talking with him. Now, I don't know if I had a copy of it or what I wrote on, but I wrote while I was talking with the attorney, and I discussed those changes with Mr. Cologna.

Q Do you recall what it was about the representation letter which you were asked to sign that you found that you could not accept?

A Well, a couple of things.

Q All right, sir. Will you tell us --

A One is it was supposed to be a representation letter for the comfort letter and it talked about the proxy, it never said a thing, as I remember it, and in addition to that it brought out items that stated they could have been determined to have been bad as of -- at May 31, 1969, as I remember it, and those were the significant changes.

Q That second item, let's just review that for a minute. The representation letter as it was originally presented, said, if I understand you, that it could have been determined at May 31, 1969 that some of the commitments or contracts were not good, is that correct?

MR. VELIE: I am going to object to the question in this form. If there is a document, it speaks for itself. Show it to the witness or offer it rather than characterizing at this point in his testimony. I object to the form.

THE COURT: I am not sure frankly of the form because I really don't know what this means.

MR. STILLMAN: That is what I am trying to bring out, your Honor.

THE COURT: Why don't you start over again. Maybe what Mr. Velie is saying is what bothers me. I don't mean to cut you off, but I just don't understand what you are trying to get at.

MR. VELIE: Your Honor , there is a document. Perhaps it would save time if he showed it to the witness and asked him for his understanding.

THE COURT: Let's leave that up to him in the first instance. He is going to rephrase it.

MR. STILLMAN: Exhibit M for identification, a document dated October 28, 1969.

Q Do you recall, Mr. Kurek, that in fact you would not sign the letter because, among other things, it reflected that you, as an officer of the company, could have known at May 31, 1969 that some of the commitments were not good?

MR. VELIE: Your Honor, I am going to object to a question on the text of a document not in evidence which hasn't been shown to the witness yet. The text he can look at and comment on what he did or didn't change. It is a simple enough matter. It hasn't been given to him.

MR. STILLMAN: I am still holding it, your Honor. I want to test his recollection. If he doesn't recall he can say that and then I will show it to him.

THE COURT: You want to know why he refused to sign the comfort letter, right?

MR. STILLMAN: Not the comfort letter, your Honor, a representation letter.

THE COURT: Excuse me. I stand corrected. The representation letter dealing with the comfort letter.

MR. STILLMAN: Precisely.

THE COURT: You want to have him state his reasons?

MR. STILLMAN: I will take that first and then I will show him the document.

THE COURT: Do you recall your reasons, sir?

THE WITNESS: Well, I have indicated already one reason it was supposed to be a representation letter regarding the comfort letter. I don't think it mentioned the comfort letter, as I remember, it had to do with the proxy.

Q Let me show you what I have marked as Scansaroli Exhibit M for identification, and ask you first -- this is a photocopy, which is all I have -- whether that is your signature at the bottom.

A That is my signature.

Q Is that below yours the signature of John Stalick?

A That is.

Q Now, will you tell the jury whether you can identify the document?

A I can identify the document.

Q What is the document, sir?

A It's the letter we have been talking about for the last five minutes.

Q Thank you, sir.

MR. STILLMAN: I will offer it, your Honor.

MR. VELIE: No objection.

MR. MARTIN: No objection, your Honor.

xx (Defendant Scansaroli Exhibit M received in evidence.)

Q Mr. Kurek, we have somewhat of a difficult task.

Perhaps we could do it together.

The document, as originally typed, certain portions of it, if you will pardon the expression, were scratched out, right?

A That's right.

Q The portions that were scratched out were the portions that you objected to, correct?

A That's correct.

Q It looks as though both yourself and John Stalick initialed the various portions that were scratched out, correct?

A That's correct.

Q The second paragraph in the text that we can read says "In August 1969 management wrote off receivables in the amount of $200,000."

That part of it was acceptable to you, right?

A That's correct.

Q I get something like this, and it is so hard to read.

A It is not legible.

Q "It appears that the uncollectiblity of these receivables" -- do you remember what it went on to say?

A No. There are better copies somewhere. This is to me totally illegible where it is scratched out. It just

doesn't come through.

MR. STILLMAN: Mr. Velie, do you have a better copy of this?

MR. VELIE: I just told you we have it downstairs.

MR. STILLMAN: Your Honor, I wonder if someone could be dispatched to go down and get it. I consider this to be a very significant part of my examination.

MR. VELIE: Can we borrow your copy?

MR. STILLMAN: Absolutely.

THE COURT: Have you got anything else?

MR. STILLMAN: Oh, yes, I will go on to something else while they do that.

Q You told us that there came a time when Joseph Scansaroli came to work for National Student Marketing Corporation, correct?

A Correct.

Q Did that come about as the result of anything that you did?

A I hired him.

Q Prior to the time that you hired him, had you asked him to come to work for the company?

A It had been discussed.

Q Do you know whether or not John Stalick, the controller of the company, had also asked Mr. Scansaroli to

to coma to work for the company?

A I believe that is true.

Q The fact of the matter is at the time that you hired him you needed someone with his background, correct?

A That's correct.

Q His job title was what?

A I don't recall what his job title was.

Q Something like Assistant Controller?

A It could have been.

Q Did he report to you?

A Yes.

Q Did youwork with him?

A Yes, I did.

Q Did you socialize with him?

A Business lunches. I don't believe I ever socialized in the evenings or weekends, personal socialization.

Q Was he the kind of employee of the company who was prepared to speak his mind if there was something he didn't like?

A Yes, I believe he was.

Q The fact of the matter is at one point he threatened to quit if you wouldn't arrange -- not if you -- if a meeting could not be arranged with Cort Randall at which Joe could air some of the grievances he had with respect to the company,

isn't that right?

A That may be right.

Q It may be right? You know it is right, don't you?

A He may have. I don't specifically recall. I am not denying it. I told you he spoke out.

Q Do you recall him expressing concern with respect to the fact that many of the top officers of the company were people with stock options worth millions of dollars who were not concentrating on running the affairs of the company, do you recall that?

A I recall that.

Q Do you recall that he made suggestions with respect to how the various subsidiaries should be reporting to the parent company so that all the information could be pulled together in a meaningful form?

A Yes, I do.

Q Did you find him to be a satisfactory employee?

A Yes, I did.

Q Did you find that he did his job well?

A Yes.

Q Did you find that he did his job honestly?

A Yes.

Q The fact of the matter is, at one point you characterized the man as one of the most knowledgeable accountants you know, isn't that right?

A That's correct.

Q You told us yesterday about the luncheon attended by yourself, John Stalick and Joseph Scansaroli.

Do you recall that?

A Yes, I do.

Q I believe you said that that took place sometime in the summer of 1969, correct?

A Correct.

MR. VELIE: We have the original of the document you have labeled M. F. We would be happy to substitute it for you.

MR. STILLMAN: I think that would be fair. May I take it out of here?

(Pause.)

MR. VELIE: Why don't we just mark it in here for now.

MR. STILLMAN: Fair enough.

MR. VELIE: Simply substitute the exhibit tag.

MR. STILLMAN: Okay.

Q Let's go back to this letter of October 28, 1969, Mr. Kurek. Let's start at the top. I think that would probably be the best way to do it. It is difficult but I think we can do it now.

The letter starts, addressed to Peat, Marwick, Mitchell and Company, 1025 Connecticut Avenue, Northwest, Washington, D. C.

Crossed out is the following, "In connection with the registration statement number, something, filed by this

company with the Securities Act of 1933, I affirm to the best of my knowledge and belief that during the period from May 31, 1969 to this date and except as set forth in such registration statement and the related prospectus," and that is scratched out. Substituted for that appears, "Next with your issuance of a letter Interstate International Corporation and subsidiaries as required by the agreement and plan of reorganization between Interstate and NSMC, I confirm to you to the best of my knowledge that as of May 31, 1969 neither the company nor any of its subsidiaries has incurred any liabilities or obligations direct or contingent or suffered any loss or entered into any transactions which would have a substantially adverse affect upon the consolidated financial position, net assets or consolidated results of operations of the company and its subsidiaries."

Crossed out is, "As reflected in the financial statements as of May 31, 1969 or for the five-years then ended September, 1" -- this portion is in.

"In adjusting the amortization of deferred costs at August 31, 1969 to eliminate therefrom all costs for programs substantially completed or which commenced twelve months or more prior an adjustment of $500,000 was required."

Cross out it reads, "Upon analysis of the retroactive effect of this adjustment it appears that the entire

amount could be determined applicable to the period prior to May 31, 1969."

It was that last portion that I read to which you objected, sir, correct?

A And the first.

Q Of course, and the first.

Excuse me.

I skipped that.

A Both of them. They are the two things I told you about.

Q Very good.

Let's go on together.

"Two. In August 1969 -- I'm sorry to keep my voice up. I just want the jurors to hear me, sir.

"In August of 1969 management wrote off receivables in the amount of $200,000."

Crossed out is the following, "It appears that the uncollectibility of these receivables could have been determined at May 31, 1969 and such charge off should have been reflected as of that date."

You objected to that language, too, didn't you?

A I did.

Q You objected to that because you felt that it could not have been determined at May 31, 1969 that those receivable

were uncollectible, isn't that right?

A That is right.

Q And you felt to the best of your knowledge, as an officer of the company, that as of May 31, 1969 it could not have been determined that the receivables reflected in there could have been written off, correct? I think I have said the same thing another way.

A Correct.

Q And that's why you wanted that language taken out of this comfort letter or this representation letter, right?

A That's right.

Q And that's why you were so concerned you called your lawyer that day to be sure that you had the right to take it out, isn't that right?

A That's right.

THE COURT: Incidentally, when you say your lawyer, do you mean someone at White and Case or are you talking about some personal attorney?

A Personal attorney.

THE COURT: Personal attorney?

THE WITNESS: Yes.

THE COURT: Anything else?

MR. STILLMAN: Just a few more things, your Honor.

Q Mr. Kurek, we were just going to talk about this

luncheon with John Scansaroli and John Stalick.

It was at that luncheon that you said that Joseph Scansaroli expressed to you the thought that because of the unbilled receivables, he wanted to put his CPA certificate into a locked box in a bank, right?

A I believe I said it was after that luncheon or after a luncheon.

Q After a luncheon?

A Yes.

Q You had lunch, the three of you were together?

A Walking down the street.

Q Yes.

Do you believe that if his certificate was in a locked box in a bank it could be protected?

A I don't know whether it could or couldn't.

Q Did you take him seriously?

A No, I didn't take him seriously, but he made the statement.

Q Were the three of you joking at the time he made the statement?

A I don't know whether we were joking or not.

Q After that time you hired the man, didn't you?

A Yes.

Q This indictment to which you pleaded guilty to one count names you in several counts, does it not?

A Yes, it does.

Q One of those counts charges you with having conspired with Cortes Randall to defraud stockholders of National Student Marketing Corporation, doesn't it?

MR. VELIE: Excuse me. Your Honor, just to clarify matters, I take it that this inquiry is relevant only to show bias or interest, is that the idea?

THE COURT: Since the question hasn't even been finished, I wouldn't know. I don't think you finished your question, did you, sir?

MR. STILLMAN: I thought I did, your Honor. I asked him whether the indictment charged that he did such and such a thing with Cortes Randall.

MR. VELIE: We are going into other charges not pleaded guilty to. I am asking if you are going into bias or interest.

THE COURT: I am going to sustain the objection for another reason. Whatever the indictment says the indictment says, Mr. Stillman. I don't think we need him to interpret the indictment.

MR. STILLMAN: I don't want him to interpret. There is a charge made against him.

THE COURT: I know. There is a point here that is very valid, nevertheless. He has not pleaded to all counts, Number 1.

Number 2, we are not trying these other counts.

Number 3, I don't think it is fair to ask a non-lawyer to interpret the count in the indictment. That is the way I understand your question.

MR. STILLMAN: I certainly am not being articulate in my question.

THE COURT: Then rephrase it.

MR. STILLMAN: Thank you, your Honor.

Absolutely, sir.

Q Did you agree to go with Cort Randall to defraud any shareholders of National Student Marketing Corporation?

MR. VELIE: I object to the form of that question as calling for a legal conclusion and being basically irrelevant. However, if Mr. Stillman wants to inquir e as to charges pending to show bias or interest, I have absolutely no objection and he can read out the charges in the plain face of the indictment.

I suggest that procedure.

THE COURT: I think probably I would agree with

Government counsel, Mr. Stillman. I would put it differently.

We have to be careful here because, first of all, as you yourself know and recognized in your first question, he hasn't pleaded guilty to all counts.

MR. STILLMAN: Precisely.

THE COURT: They are still pending. Therefore, there are some other problems here which you know full well I am talking about. I don't think I need to elaborate.

Thirdly, I agree with Mr. Velie, that I don't see that this is the way to do it.

What you might be attempting to do you can do quite a differant way without running into this problem or these problems.

Start over again a third time.

Q Mr. Kurek, who ran the show at NationalStuden Marketing Corporation?

A Cortes Randall, president.

Q And even though you were a named officer of this company, did you in a sense consider yourself to be an employee?

A Yes, I did.

Q On April 3, 1974, you entered a plea of guilty in this courthouse to one count of the approximately 11 separate charges of crime which have been made against

you in this indictment, is that correct?

A That's correct.

Q You have been told, as I understand it, by the Government of the United States that after you have been sentenced in this case following your testimony, that the other open counts will be dismissed, isn't that right?

MR. VELIE: Your Honor, if this is gone into for the purpose of showing bias or interest, I have no objection. If some other purpose is stated, I would like to know what it is.

THE COURT: I don't know what you are talking about at all, Mr. Velie.

On this one I think this is a fair question.

MR. VELIE: I agree if it is going --

THE COURT: Let's not argue about it.

MR. VELIE: Very well.

THE COURT: I assume it is. I wouldn't put it quite the way you do it, but it is close enough.

MR. VELIE: I have no objection then.

Q Now --

THE COURT: Wait a minute.

THE WITNESS: Will you ask the question again, please?

THE COURT: I can't blame you.

Q Mr. Kurek, have you been told that following your testimony in this case, following your sentence, that the remaining criminal charges against you will be dismissed?

A What has been told to me or agreed with is in a letter between the Government and my attorney and myself. I think it is here in the courtroom. That explains any and everything.

Q I would like to know, sir, from your mouth as you sit on this witness stand testifying against my client whether or not it is your understanding that following your testimony in this trial and your sentence, that the remaining criminal charges against you will be dismissed?

THE COURT: Strike that. Objection sustained as to form.

What he really wants to know is very simply whether it is in the four corners of that written agreement that you and your lawyer have with the Government lawyers, were you in words or substance told that once you are sentenced in one count which you pleaded guilty hereto, do you expect that the other counts in the indictment will be dismissed?

THE WITNESS: I do expect that they will be dismissed.

THE COURT: All right.

Anything else, Mr. Stillman?

MR. STILLMAN: A few more, your Honor.

Q You also expect, do you not, that Mr. Velie will stand up at the time of your sentencing and speak to the Judge in your behalf, do you not?

A Well, I haven't read the letter. Whatever agreement there is, it is in the letter. I don't want to speak for what Mr.Velie will or won't say.

Q You signed the letter, didn't you?

A Yes, last April.

End 3B

Tk 4A

jhb-1 Kurek-cross

THE COURT: Just a moment. I am not sure Mr. Stillman has made his question clear.

MR. STILLMAN: I have a copy of the letter.

THE COURT: Correct me, Mr. Stillman. What you really mean to ask is this: Do you have an understanding in writing or otherwise as to the Government's lawyer, Velie or whoever it might be, bringing to the attention of the sentencing Judge your testimony in this trial?

THE WITNESS: Yes.

THE COURT: All right. Anything else, sir?

MR. STILLMAN: Yes, I do, your Honor.

Q Now, Mr. Kurek, will you tell us what a stock option is?

A A stock option is a right that is granted to someon at some point in time to buy stock at a future date at the price that it was on the day or date that the right was granted.

Q The difference between that price and the price the day on which you exercise the right is the profit, right?

A If the selling price is greater.

Q Up, right?

A Right.

Q Did you have any stock options in National Student Marketing Corporation?

A Yes, I did.

Q Did the value of those options ever reach $500,000?

A I think they did at a point.

Q You say you think they did. Do you know that?

A That's roughly right.

Q Was the value of those stock options something that you thought about at any time as an employee of National Student Marketing Corporation?

A I thought about it at times.

Q In fact, did you ever sit down and actually calculate what the value of those options was at any given time?

A From time to time I calculated the value.

Q You wrote it down in your diary, didn't you?

A Yes.

Q As a matter of fact, you wrote it down at one point and figured out that it was worth about $360,000 to you, right?

A That could be.

Q You say it could be. Do you deny it?

A If you have got the diary I will verify it. I don't remember.

Q You know the Government gave me the diary, don't

you?

THE COURT: All right. Let's go to something else.

A Show me the diary.

Q Did those options in any way affect your judgment or your performance as an officer of National Student Marketing Corporation?

A I don't think they did, Mr. Stillman. I always felt that somebody was giving me something for nothing and I never believed it would come true, and it didn't.

Q But if it had you would have been a wealthy man, right?

A If it had.

MR. STILLMAN: I have no further questions, your Honor.

THE COURT: Mr. Martin, perhaps it would be wise if we took the afternoon recess before we heard from you.

MR. MARTIN: I will go beyond the recess, that is for sure, your Honor. So fine, yes.

THE COURT: Ten minutes,ladies and gentlemen.

(Recess.)

MR. MARTIN: May I proceed, your Honor?

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. MARTIN:

Q Mr. Kurek, Judge Tyler and the court reporters have had occasion from time to time to remind me that once in a while I let my voice drop. If you have any trouble hearing me at any time you just say so and I will try and speak up.

Prior to today, Mr. Kurek, have you and I ever met?

A Yes.

Q When was that, sir?

A Back in March or April, at the arraignment.

Q Does it refresh your recollection that that was some time at the end of January, sir?

A Well, could have been then.

Q Did you see my client, Tony Natelli, on that same date that you saw me?

A Yes, I did.

Q Since that date until today have you seen either Mr. Natelli or I?

A Yes. I saw you Tuesday or Monday, whenever we started.

Q Until this trial started, from the date of the arraignment until that day, youhad not seen me, is that

correct?

A That's correct.

Q Or Mr. Natelli?

A That's correct.

Q There was a period when you saw a good deal of Mr. Natelli, is that correct?

A Yes, there was.

Q And of Mr. Scansaroli, is that correct?

A That's correct.

Q Would you say, sir, that they were friends of yours?

A They were business friends of mine.

Q The day of the arraignment, which was in January of this year, did you have occasion to tell Mr. Natelli on that day that he and Mr. Scansaroli should not have been indicted in this case?

A I may have told them that. I don't recall whether I did or didn't.

End 4A

Q On the day of the arraignment, did you and I have occasion to conduct any business at all?

A Well, you handled the arraignment papers.

Q I handled the arraignment papers for you, is that correct?

A You helped because the attorney that was with me had another engagement. So after the arraignment I went with you all through the courthouse.

Q And without overstating the case, I simply assisted you in the processing, is that correct?

A That's correct.

Q Did I do anything on that occasion to offend you, sir?

A To do what?

Q To offend you.

A No, you did not.

Q Subsequent to that time, did I make a request to be given the opportunity to speak with you in the presence of your counsel prior to the time you testified?

A Yes, you did.

Q And did you refuse that request?

A Yes, I did.

Q I show you, Mr. Kurek, what has been marked Natelli Exhibit A for identification, and ask you if you can

tell the ladies and gentlemen of the jury what those records are.

MR. VELIE: Would you have a copy for us, Mr. Martin?

MR. MARTIN: No, I don't. These are documents I got from the marshal's office.

A They are copies of expense reimbursements paid by the marshal's office for my trips up here in preparation for the trial.

Q Those were trips up here which you made to talk to Mr. Velie about what would be the subject matter of your testimony, is that correct, sir?

A That's correct.

Q Those records -- you may look at them if you want, sir -- reflect, do they not, that you spent 13 days with Mr. Velie preparing to testify, is that correct?

A More or less. I counted up twelve days. Sometimes there is a day they reimbursed me I came up the day before I would meet with them when I was living in Orlando because I couldn't get up here in the morning of the day of the meeting. But I counted up 12 days of meeting with Mr. Velie to your 13.

Q That is 12 days for Mr. Velie and no days for me, right, sir?

A That's correct.

Q That was part of your deal, was it not, Mr. Kurek, which you made when you pleaded guilty to one of 11 counts?

A What was part of my deal?

Q That you would come up and talk to Mr. Velie?

A That's correct.

Q But you couldn't talk to the lawyer for your friend Mr. Natelli, is that right?

MR. VELIE: I am going to object to the form of that question.

THE COURT: Again, I am sorry, I can't rule on it because I didn't understand the question. Your voice dropped. Could you read it back? Did you get it?

(Question read.)

THE COURT: Sustained.

Q Let me show you Government's Exhibit 46A, the nine-month statement of earnings for the period ending May 31, 1968. That is the document containing the financial statements prepared by yourself and Mr. Sullivan, is that correct?

A That's correct.

Q What is the net income which that document reflects the company earning for three quarters of the year, fiscal year 1968?

A Net income is $288,390.

Q The fact is, sir, is it not, that when the year end statements were prepared the net income reflected in those statements was approximately $388,000, is that correct?

A That's approximately correct.

Q And the three-quarter of the year statement reflected income about three quarters of the income reflected for year end, is that correct?

A That's correct.

Q You testified, sir, I believe, that you had express some reservations about the theory of contracts in progress accounting, is that right?

A That's correct.

Q Did you express those reservations to Mr. Sullivan?

A Yes, I did.

Q Did you actually check with other accountants and raise the question with them about this method?

A At some point in time. I don't know if it was when this document was being prepared. But I had a conversation at a point in time with an accountant about contracts in progress.

Q We are talking about somebody other than a Peat, Marwick accountant.

A Yes, and I don't know what time -- when I had that conversation.

Q Did that accountant tell you that that was an acceptable method of accounting?

A He told me the contracts in progress was a way of accounting.

Q Yesterday, Mr. Stillman showed you a document. There was a problem with it.

MR. MARTIN: Let's have the new copy marked as Natelli B.

xx (Defendant Natelli Exhibit B marked for identification.)

Q Were you present when Mr. Randall also discussed contracts in progress accounting with Mr. Sullivan?

A I believe I was.

Q You yourself had discussions with Mr. Sullivan on subject, is that correct?

A That's correct.

Q Have you read what is now the exhibit in front of you, sir?

A Yes, I have.

Q Does that document reflect the substance of what the conversations were with Mr. Sullivan and Mr. Randall about the company's method of accounting used in preparing the statements for the period May 31, 1968?

A It does except for these percentages that are

indicated on the back page. I don't recall that, but the rest of it is what I understand it to be.

MR. MARTIN: Your Honor, I would offer Natelli Exhibit B for identification in evidence. I will be happy to include or exclude the portion that the witness said he doesn't recall, if Mr. Velie has any objection to that portion?

THE COURT: May I ask, was there a Natelli Exhibit A?

MR. MARTIN: Yes, your Honor. Those were the marshal's slips.

THE COURT: Which have been marked D for identification?

MR. MARTIN: Yes.

MR. VELIE: I have no objection to any or all of that.

THE COURT: I take it you have none?

MR. STILLMAN: Absolutely none.

xx (Defendant Natelli Exhibit B for identification received in evidence.)

Q Do you recognize that document as a document being written by Mr. Sullivan?

A No, I don't. I said yesterday I couldn't identify his handwriting.

Q It does reflect the contracts in progress for 5-31-68, is that correct?

A It does.

Q And it also reflects the substance of your conversation with Mr. Sullivan on this theory, is that correct?

A Yes.

MR. MARTIN: Your Honor, may I read this document to the jury at this time.

THE COURT: Surely.

(Mr. Martin read from Defendant Natelli Exhibit B in evidence to the jury.)

Q Did you, sir, in the course of preparing the 5-31-68 financial statements, have occasion to provide Mr. Sullivan with certain documentation from the company?

A Yes, he was provided with certain documentation.

MR. MARTIN: May we have this marked, please, as the next exhibit.

xx (Defendant Natelli Exhibit C marked for identification.)

MR. MARTIN: In this case I had the forethought to provide a copy both for Mr. Velie and the Court, if you would like one. I am afraid I cannot guarantee that I will have that much forethought through the proceeding, your Honor.

Q I show you Natelli Exhibit C for identification,

sir, and ask you if you can look through those documents and identify them for us?

A I can read off of here what it says or what they are.

Q Do you recognize any of them as being documents that were used in preparation of the May 31, 1969 financial statement?

A Theinformation from the account executives, et cetera, I don't recognize primarily, because the work -- the material went to Mr. Sullivan from Randall rather than me, and in the contracts area, some of the work sheets I have seen before.

Q The document which is the last page of that which lists contracts in process, is that the work sheet that you reviewed in refreshing your recollection that the gross amount of the commitments was 260,185?

A Yes, it is one of them.

Q In reviewing that document, did that refresh your recollection, sir, that there was a commitment booked in May 31, 1968 for Chattem Drugs, the third entry from the bottom?

A Yes, I saw that.

Q Would it refresh your recollection to look at Exhibit C -- perhaps it might be more expeditious if we did this together.

MR. MARTIN: If anybody on the jury doesn't hear me, please just indicate and I will try and speak up.

Perhaps for a moment I will pull off the last page of C and sit that before you, sir.

I ask you to look at a document relating to Chattem Drug. Does that refresh your recollection, sir, that the entry for Chattem Drug in contracts in process for May 31, 1968 was based on a memorandum from Mr. Ganis to Mr. Randall dated July 16, 1968?

A It appears as though that supports that work sheet, but it does not refresh my memory at that time. As I said, Mr. Sullivan worked this up.

MR. MARTIN: I am going to offer this document, your Honor.

MR. VELIE: Your Honor, perhaps it would be much clearer for the jury if Mr. Sullivan were produced by the defense --

MR. STILLMAN: Excuse me?

MR. VELIE: Mr. Sullivan did work on these matters --

MR. MARTIN: If Mr.Velie has an objection, I think he should state it.

MR. VELIE: This witness doesn't appear to know anything about this.

MR. MARTIN: I will take it one at a time, your Honor. I tried to speed things up. I am sorry.

Q Mr. Kurek, again looking at the last page of Defendant Natelli Exhibit C, which is the document you used to refresh your recollection when you were testifying for the Government, does that refresh your recollection that there was a commitment for duPont?

THE COURT: Excuse me, Mr. Martin. What I have here, the last pages, seems to be the same thing as Natelli's B.

MR. MARTIN: That is the last page, Judge.

THE COURT: Fine.

MR. MARTIN: That is the page the witness has in front of him.

MR. VELIE: May I have a second under voir dire?

THE COURT: One at a time. My confusion that I am creating is enough for the moment, Mr. Velie. I still am puzzled. This portion that I just handed you looks like Natelli Exhibit B.

MR. MARTIN: It does, your Honor . I think I included too much in the offer. The other documents are not. This was all part of one document that I had.

Mr. Velie had a part that I used as B. I simply did not --

THE COURT: I also point out we have a very interesting piece of paper which is part of my copy of Natelli's C for identification, which purports to be a xerox of the bottom of one page and the whole of another page, which I am sure is an inadvertence, wouldn't you agree?

MR. MARTIN: Yes, your Honor, it is. I think that comes from xeroxing accountants' work papers. I am sorry about it.

THE COURT: I don't wish to be rude, but could we have some resolution of thse problems? Which do you want to include in Natelli C and which would you just as soon agree we ought to exclude?

MR. MARTIN: I would be happy, your Honor, to exclude from Natelli C any of the long -- I take that back -- any of the pages other than the last one to which your Honor referred, which is the one that seems to be from two pages. All of the short pages --

THE COURT: You still want to hold onto what appears to be a duplicate of --

MR. MARTIN: No, your Honor, take all of those out.

I think it would simplify matters. I think

those are clearly simply accountants' work papers.

THE COURT: All right, except for this peculiar piece of paper where there was a xerox overlap. We will put it that way.

MR. MARTIN: That is right. We would be happy to cut off the overlap.

THE COURT: The point is, we can consider Natelli Exhibit C redacted accordingly.

MR. VELIE: May I have a moment to see what C now is, your Honor? I believe I can do this in a second.

THE COURT: All right.

MR. MARTIN: Could we unredact one page, your Honor, the former last page, which is the one the witness said he used to refresh his recollection when he was testifying?

THE COURT: You mean you want it to go back in C?

MR. MARTIN: Yes, your Honor.

MR. VELIE: I have done that to Mr. Martin's Exhibit C, so that it is conformed. If I may have one question under voir dire, perhaps we can get to the bottom of the matter.

End 5B

VOIR DIRE EXAMINATION

BY MR. VELIE:

Q Mr. Kurek, Mr. Martin is showing you this last page of his ExhibitC. Is that paper, as far as you can tell, a copy of something that is in your handwriting?

A It is not in my handwriting.

Q Is it something you looked at recently to refresh your recollection to give testimony?

A Yes, it is.

MR. VELIE: I certainly have no objection to the last page.

Q The balance of the materials in here, have you had a chance to look at these and see if you can tell what these pieces of paper are?

A Well, I can go page by page and say it is a letter from so and so to so and so, but I don't recall having seen these. There is charts in here that are, you know, news to me.

What I am saying is that this material was worked up by Michael Sullivan, Randall primarily supplied Sullivan the revenue information for that nine-month statement, and I don't recall having had this or seen it.

Q Are you able to tell us just the same whether the balance of Natelli's Exhibit C appears to be the material

that Mr. Randall made available to Mr. Sullivan?

A Well, I can look at it piece by piece and try to determine it.

A Do you want me to answer piece by piece?

Q Yes. Do you think you can tell from looking at the final sheet or any other way if that appears to be what Mr. Martin says it is?

A Well, the top sheet is a letter from Ayer & Son or to Ayer & Son Company and on the last page it has poster waves of 22,500. I don't see the name of the company that the letter is addressed to nor do I see offhand the amount of money on the back page on this schedule.

You want the next one?

Q Identify it if you can.

A All right. The second company of papers included in here appears to be Eastern Airlines. On the last page of Sullivan's summary there is an Eastern Airlines I believe next to the bottom that says $55,000.

Q Do those appear to tie in?

A On here there is a program proposal, apparently, 317,500. I don't see a particular one that says 55,000 that ties into there. There is 60, 15,000, 7500, 100,000, 95,000.

MR. VELIE: Your Honor, I have no objection to

the offer of papers this witness can tell us something about. The balance are just pieces of paper and nobody can identify them from the witness stand here under oath.

Accordingly, I ask Mr. Martin to reserve the balance of his offer until somebody can tell us what they are.

THE COURT: I will sustain that objection.

MR. VELIE: Thank you. There is a piece that I have no objection to. That is the last piece.

BY MR. MARTIN:

Q You did, sir, did you not, just so we don't get in any more trouble --

A I don't have any papers.

Q I am looking for the exhibit nu mber. There it is.

Do you have a recollection, sir, that many of the contracts booked by you and Michael Sullivan through May 31, 1968, the booking of those contracts was based simply on memoranda from account executives dated on dates subsequent to May 31, 1968, in which they stated that they had obtained a final commitment?

A That I do recall.

Q Which is quite similar to what was done at 8/31/68, is that correct?

A I didn't hear what you said.

Q Which was quite similar to what was done for the

figures compiled for 8/31/68.

A Similar.

Q I believe you told us, sir, that you did not begin collecting documentation for the contracts in progress for the period ending August 31, 1968, until some time in October.

Is that your testimony?

A That was my testimony.

Q It was?

A Yes.

Q Do you know if anybody on your accounting staff prior to that date communicated with others in the National Student Marketing organization asking them to get together files on contracts and particular files where there were not written contracts?

A That had to do with what period now?

Q For the period ending August 31, 1968.

A There may have been some communication from Larry Tucker to people, but Bill Chapman was also in the process of trying to collect data on anything we could get our hands on. That is why I asked for what period.

xxx (Defendant Natelli Exhibit D was marked for identification.)

Q I show you Defendant Natelli Exhibit D for identi-

fication and ask you, sir, if you can identify that.

A It appears to be a memo from Mr. Chapman to Larry Tucker trying to get commitment information.

Q The type of memorandum you testified was made in the regular course of business of National Student Marketing, is that correct?

A Yes, that appears to have been made then.

MR. MARTIN: I will offer Natelli Exhibit D for identification. I am not offering the handwritten portion.

VOIR DIRE EXAMINATION

BY MR. VELIE:

Q Mr. Kurek, can you tell for what period these particular commitments appear to be? Are those year-end commitments?

A I don't think they are year-end. I think they had to do with a period prior to that, which was one of Mr. Chapman's first assignments, was to try to set up contract files, and I think this has to do with that job.

MR. VELIE: I have no objection to it.

xxx (Defendant Natelli Exhibit D was received in evidence.)

BY MR. MARTIN:

Q You say, Mr. Kurek, that that document deals with a period other than the August 31, 1968 period, is that correct

A I believe it does.

Q The company put out reports more than quarterly, sir?

A No, it didn't.

Q The last quarter before August 31, 1968, was the quarter for May 31, 1968 we have been talking about, is that right?

A That's right.

Q That report came out early in August, did it not, sir?

A It did.

Q This document is dated August 26, 1968, is that correct?

A That's correct.

Q And you say in August 26 you were worried about getting information for the May report which you put out early in August, is that correct?

A I did not say that.

Q Is that what your testimony is?

A No.

Q What period is Mr. Chapman talking about in this document?

A If you want to make it clear, consider it no period. He had come to work with the company -- for the

company some time in July. We were trying to establish contract files for any period of time, any contract material we could get our hands on. It didn't have to do with May or August. You know, any period. We were trying to set up some contract files.

Q This document was dated August 26, is that correct?

A That's correct.

Q On August 27th you met with Mr. Natelli and Mr. Scansaroli, is that correct?

A That's correct.

Q You were meeting with them about preparing the August 31, 1968 documents?

A That's correct. I am telling you what I know about that memo. It was written by Bill Chapman. Why don't you ask Mr. Chapman? That's all I can tell you about it.

MR. MARTIN: Your Honor, may I read this document to the jury? In fact, I will only read a part of it to save time. If it will be quicker, I can read it all.

MR. VELIE: Yes, I think you better, Mr. Martin.

(Mr. Martin read from Defendant Natelli Exhibit D in evidence.)

Q Is that from Bill Chapman to Larry Tucker?

A I think it is because down at the bottom it says B.C./somebody typed it. That appears to me to indicate Chapman was sending the memo.

(Mr. Martin read from Defendant Natelli Exhibit D in evidence.)

Q Mr. Kurek, Mr. Stillman was asking you this morning about the theory on which percentage of completion is used.

Isn't it a fact, sir, that the theory underlying the use of percentage of completion accounting was that there were many costs, such as overhead, travel, entertainment, incurred by the account executive department that were incurred in getting a commitment?

A There could have been that, yes, sir. He didn't ask me that this morning though. He asked about salaries.

Q I'm sorry. He was asking about costs.

A Exactly.

Q Let's take my question.

MR. VELIE: Is there a pending question?

MR. MARTIN: No. I am looking for something.

MR. VELIE: I am sorry.

Q Let me ask you, do you recall being questioned at the SEC, at page 102, and did you give this answer:

"I have indicated" --

A First of all, I haven't memorized what is on page 102 or whatever page.

Q I am doing that for Mr. Velie's benefit because he doesn't have his copy.

A I am sorry. I thought you were asking me.

MR. VELIE: Why don't you read the question, so the jury knows what is happening.

MR. MARTIN: Sure.

Q Question by Mr. Ford:

"Q I believe it has been stated or written to us that the majority of the expenses was incurred prior to taking the commitment.

"A The majority of the expense or the majority of the time. I don't know what you are referring to.

"Q The majority of the cost associated with that commitment.

"A It could be incurred by the company?

"Q Yes.

"A I don't know what you are referring to. If you are referring to something specific, if I can look at it maybe I could clarify it. I have indicated that I understood that

an account executive, the majority of his time that was involved with that client was before they committed because that's when you develop a program. If you are using an advertising agency, you may go to the account executive. Then you have to get him sold. You go to him a couple of times, so that he feels he has something to go to his superior with, and he says, 'let's go over and make a presentation to the client,' so where you get to the point where you are committed he could have spent two or three weeks or two or three months.

"I don't know that they ever did that. The majority of the time the exec had to spend with that client and third parties took over training and distribution.

"Q We are trying to determine whether the majority of the costs was incurred prior to setting up of the commitment.

"A I don't know what the costs would have been. If he is wining and dining the advertising agency people and the client that would have been an expense. If he was traveling out of town and it was not a New York client, say out in Kansas City, the air fare, hotel, and all of that wouldn't be expense" -- there was a correction here -- "wouldn't be expenses, if he was on salary that would be expense. If he was on a commission draw that would be an asset. That's all I can tell you."

Was that the testimony that you gave to the Commission as best you can recall?

A If that's my SEC testimony, that's what I said.

Q When you were testifying before the SEC you referred to the NSMC employees as account executives, is that correct?

A That's correct.

Q When you testified at this trial you referred to them as salesmen, is that correct?

A That's correct.

MR. VELIE: I think the record should reflect I asked him if those were salesmen.

Since that time he's been good enough to call them salesmen.

Q You were good enough to adopt Mr. Velie's word salesman, although all the time prior to that you called them account executives.

A I felt he did use account executives the same as salesman.

That was a more familiar word with them. They are synonymous.

Q They were called executives at National Student Marketing, is that right?

A That's right.

Q You told us, Mr. Kurek, of that conversation you had with my client Mr. Natelli late in October of 1968. Do you recall having given testimony about such a conversation?

A Yes, I do.

Q You told us the other day that with reference to the $25,000 figure you first used for the May 31, 1968 commitment, that you have some difficulty with your recollection if you don't have prior testimony or something else to refresh your recollection.

Does it appear anywhere in your SEC testimony or in your grand jury testimony or any of the other documents you may have used to refresh your recollection that you ever told anyone before of that conversation which you said you had with Mr. Natelli at the end of October 1968?

A I don't know whether it is in the SEC testimony or not. I haven't sat down and studied it for a long time.

Q You were relying on your unaided recollection when you gave that testimony, is that correct?

A That's correct.

Q You will admit that your unaided recollection is sometimes quite weak?

A Sometimes it's weak.

Q You told us that there came a time, sir, when you had a meeting in December with Mr. Natelli and others concerning the procedures that were going to be used for booking of commitments in the future.

Do you remember testifying about that December 9 meeting, I believe?

A I recall testifying about a December 9 meeting. I don't know that is what you just said it was.

Q All right. Let's not worry about the substance, let's worry about the day.

A Worry about the what?

Q The day. There was a meeting on December 9, is that correct?

A That's correct.

Q That was a meeting at which you testified that Mr. Natelli stated that he wanted the commitments firm, is that correct?

A There was more to it. It didn't just stop right there. He did testify to that effect -- he did say that in that meeting.

Q Didn't Mr. Natelli say at that meeting, sir, that he wanted the commitments to be in writing?

A I'm not sure he said they were to be in writing. My best recollection is what the memo of June -- of December the 9th, 1968 has in it. It was written right after that meeting.

Q Did you testify, sir, in the grand jury, and you were being asked -- I'm going to ask you to look at your grand jury testimony, page 21, December 11, 1973.

Did you testify, sir, before the grand jury that

at that December meeting Mr. Natelli said that he wanted the commitments to be in writing, to be a written contract or letter of commitment or a letter of intent from the client?

A That's what the testimony indicates.

Q Were you telling the truth in the grand jury, sir?

A To the best of my knowledge. I don't know that I had seen the minutes of the -- or the memo of the December 9 meeting before that or not.

Q If you don't have the memo, you don't have a very good recollection, is that it?

A Well, not always, Mr. Martin.

Some of these things are five and six years ago almost.

Q I can understand your problem.

There was no indication at that meeting, was there, sir, that there was any concern that there was something wrong with the August 31, 1968 financial statement, was there?

A Not that I recall.

Q Sir, Mr. Stillman asked you this morning about some of the companies that were acquired by National Student Marketing after the August 31, 1968 financial statements were issued and prior to the time the proxy statement was issued.

I want to ask you some questions about that same period of time and some of those same companies, and I will try to avoid as much duplication as possible.

Some of thesebusinesses were relatively substantial, were they not?

A Yes.

Q Basically private companies, but of a relatively substantial nature.

A Some of them were, right.

Q And these companies had their own staff of accountants, is that correct?

A Some of them did.

Q And those that didn't had certified public accountants who worked with them, is that correct?

A I believe so.

Q And even some of the larger ones that may have had their own staff of accountants, they also in many instances had certified public accountants who worked with them, is that correct?

A That's correct.

Q Did you have occasion to speak to some of the accounting people working either with or for the companies that wer e being acquired by National Student Marketing Corporation?

A I did from time to time.

Q And were most of these companies provided with the August 31, 1968 financial report of National Student Marketing?

A I don't know. I don't recall giving it to them personally. They may have been provided.

Q Do you know if any of them have?

A Do I?

Q Yes.

A I don't recall personally sending it to any of the companies.

Q Did any of them ever come to you and say that they had some questions about any of the National Student Marketing accounting?

A Interstate National did, but that is later down

the line.

Q That is later down the line. Prior to that none of these other companies had made any inquiries --

A I didn't say none of them. They may have. I don't recall that they did.

Q Your best recollection as you sit here then is that you did not have occasion to discuss with any accountant for any of the companies that you were acquiring the August 31, 1968 financial statement, is that correct?

A That is not what I said.

Q I'm sorry. Where was I in error?

A You are trying to put words into my mouth.

Q I am not, sir.

A I said I don't remember personally sending a financial statement to any other potential companies to be acquired. I said some of them may have inquired about the financials, but I don't have a definite recollection of it. That is what I am saying.

Q WEre the financial statements for August 3, 1968, provided to the representatives of Interstate?

A That I don't know. I didn't conduct the acquisition.

Q Did you have occasion to talk to anybody representing Interstate about the financial condition of National

Student Marketing Corporation?

A Yes, I did.

Q And Interstate had a large brokerage house, White, Weld & Company, doing a study of National Student Marketing in connection with their proposed merger, isn't that correct?

A That is correct.

Q And did you have occasion to speak to anybody from White, Weld & Company?

A Yes, sir, I did.

Q And that was Mr. whom?

A I don't recall his name.

Q Mr. Bischof?

A Bischof is the name.

Q Did Mr. Bischof have the August 31, 1968 financial statement s of National Student Marketing as best you can recall?

A I don't recall what he had. I do recall talking with him though.

Q At present there is no particular person you can recall discussing representing one of the companies that was being merged with or acquired by National Student Marketing who you discussed the financial statements with, is that correct?

A I just said I discussed -- I talked with Bischof. YOu didn't ask me what I discussed with him.

Q Did you know whether or not he had the financial statements?

A I don't recall whether he had the financial statements.

Q Did he ask you any questions about contracts in progress?

A Yes, he did.

Q What did you tell him, sir?

A As best I remember, he inquired as to the theory as to how contracts in progress worked and that is what I answered him.

Q Did you tell him anything about any writeoffs of contracts that had been booked in August 31, 1968?

A I don't think I did tell him about any writeoffs.

MR. MARTIN: Your Honor, if this would be a convenient time, I am going on to another area. It is five minutes early.

MR. VELIE: Your Honor, if the balance of the cross is going to be brief, I can certify my redirect as brief. Mr. Kurek has come from a long way.

MR. MARTIN: I can certify, your Honor, that it would not be brief. It would be at least an hour, possibly

more. It would probably be briefer if I have a little more time to prepare for it.

THE COURT: We will look with hope and expectation toward the later point and go along with you.

MR. MARTIN: Thank you, your Honor.

THE COURT: Ladies and gentlemen of the jury, we will suspend now and we will not resume until Tuesday morning, as you know, at ten o'clock.

I am going to say to you that we will hold open, as I suggested yesterday, the question about a week from Friday. There is a possibility I might be able to clear the decks a week from Friday . I am not sure yet. Hopefully I can report to you about that on Tuesday next week when we reassemble. As to election day, as I also said, I want to keep that open . I want to see how we go. I will discuss that with you in advance, too.

Put the case out of your mind until we reassemble on Tuesday and enjoy yourselves and your other endeavors over the weekend. We shall see you promptly at ten o'clock on Tuesday, which will be October 29th, I believe.

Good night.

(Jury left the courtroom.)

MR. STILLMAN: If your Honor please, I am sure it was inadvertent and that's why I waited until after the jury was gone, but I believe when we were talking about Mr. Sullivan, Mr. Velie said something like, "Why don't you call him," or something like that. We all know there is nobody that we have to call since there is no burden of proof at all upon us.

THE COURT: I am not --

MR. STILLMAN: If your Honor please, I am not moving for a mistrial. I am just asking him on the record to please refrain from that, recognizing that it was inadvertent. I just don't want to have to react to it in front of the jury.

THE COURT: I don't know that I heard Mr. Velie say as much, but I won't argue with you.

(Discussion off the record.)

MR. VELIE: I am sorry to trouble the Court with this and to reopen the record, but Mr. Stillman insisted that I put this request on the record.

I asked him if I could have copies of the exhibits that he has marked as defense exhibits today and he tells me he won't respond except on the record. So I am asking Mr. Stillman, may we please have copies.

MR. STILLMAN: Certainly, Mr. Velie.

jhg a

MR. VELIE: Thank you.

(Adjourned to 10 a.m., October 29, 1974.)

United States of America

vs. 74 Cr. 43

Anthony M. Natelli and
Joseph Scansaroli

New York, New York.
October 29, 1974 - 10:00 A.M.

(Trial resumed.)

(In open court; jury present.)

B E R N A R D J. K U R E K resumed.

THE COURT: Mr. Martin.

MR. MARTIN: Good morning, your Honor.

CROSS-EXAMINATION (continued)

BY MR. MARTIN:

Q Good morning, Mr. Kurek.

A Good morning.

Q Mr. Kurek --

MR. MARTIN: Your Honor, before we begin, just a housekeeping chore.

I think we agreed, Mr. Velie, did we not, that this part of C, the last page, there would be no objection to that going in evidence.

MR. VELIE: That is correct.

MR. MARTIN: Could we take that out and mark it

C-1, your Honor, so it is properly identified?

THE COURT: All right.

MR. MARTIN: I would offer C-1 for identification in evidence.

MR. VELIE: There is no objection.

xxx (Defendant Natelli Exhibit C-1 received in evidence.)

Q Mr. Kurek, I believe you told us when you were testifying on direct about a meeting in December of 1968 and stated that at that time none of the unbilled receivables as of August 31, 1968, had been booked. Do you recall that?

A That none --

MR. VELIE: I object to the form of that question. I believe you misstated, perhaps inadvertently.

Q To your recollection, sir, were any of the unbilled receivables that were booked as of 8-31-1968 booked in December 1968?

A They were booked prior to that.

Q I mean billed. I am sorry. Were any of these billed by December 1968?

A If they were, it was very insignificant.

Q I show you what has been marked Defendant Natelli Exhibit E for identification and ask you to look at that and would you tell the ladies and gentlemen of the jury

what that is.

A It appears to be a copy of a National Student Marketing Corporation journal entry sheet.

Q Does that reflect amounts of unbilled receivables that were actually transferred to the billed account in December of 1968?

A Yes, there is an entry in here that does reflect that.

Q Does that refresh your recollection, sir, that over $175,000 of unbilled receivables were billed in December 1968?

A Yes, it does.

Q You told us, sir, about a meeting in March of 1968 that you attended with Mr. Randall and Mr. Natelli and you said that this occurred after you had given Mr. Natelli, I believe, a tentative profit and loss schedule, is that correct?

A That's correct.

Q At that meeting your profit and loss schedule indicated that certain of the commitments would have to be written off, is that right?

A That's correct.

Q Isn't it a fact, Mr. Kurek, that at that meeting Mr. Randall insisted that you were wrong and that those

commitments were in fact good?

A I believe that is correct.

Q Mr. Kurek, we spent a good deal of time talking about commitments. I take it, sir, commitments were not your only concern as the chief financial officer of National Student Marketing Corporation, is that correct?

A That is correct.

Q Is it fair to say they really took up a small part of your time?

A That is probably right.

Q Do you recall, Mr. Kurek, making the following statement when you testified before the grand jury, page 69.

MR. VELIE: Bear with me a second, please, Mr. Martin.

MR. STILLMAN: Mr. Velie, would you like mine?

MR. VELIE: Yes. Thank you.

MR. MARTIN: December 11, 1973.

Q Starting at Line 21. This is you testifying. Do you recall giving this testimony:

"Now, what I'm trying to get at as it sits -- we sit here for two days, we talk about nothing but commitments and that isn't all I did. I didn't sit in an office all day and think about commitments eight hours or 10 hours a day, six or seven days or five days a week. There were

lots of other things involved in running the company and that's not what's coming out across this table."

Did you give that testimony before the grand jury?

A Yes, I did.

Q That was true, wasn't it?

A That is true.

(Pause.)

End 1A

Q You did many other things other than be involved with commitments, is that correct?

A That's correct.

Q Isn't it also true that many of your dealings with Mr. Natelli involved things other than commitments? Isn't that right?

A Yes.

Q There were a wide variety of accounting issues that you discussed with Mr. Natelli, isn't that right?

A That's right.

Q Things like the amortization of list companies, isn't that right?

A Yes.

Q Question of pooling of interest accounting?

A Correct.

Q Just a wide variety of subjects, is that right?

A That's right.

Q One of the things that you discussed with Mr. Natelli, sir, was the question of the proper method of recording income for New England Travel Corporation?

A Correct.

Q New England Travel was a subsidiary of National Student Marketing, is that correct?

A That's correct.

Q When was that acquired, as best you can recall?

A In the early part of 1969, January, February-ish.

Q Can you tell the ladies and gentlemen of the jury, do you recall what the problem was with regard to the accounting for the income of New England Travel that you discussed with Mr. Natelli?

MR. VELIE: Excuse me.

Your Honor, I believe this is well beyond the scope of the direct or any issue in this case and is irrelevant.

Accordingly, I object.

THE COURT: I must concede that I am a little perplexed as to what it has to do with our case, Mr. Martin, but I will assume it is going to lead to something.

MR. MARTIN: Yes, your Honor, I think it will.

THE COURT: Then we will take it subject to that.

A Will you reask the question, Mr. Martin.

Q Do you recall what the issue was with regard to the accounting for income for New England Travel that you had occasion to discuss with Mr. Natelli?

A Well, there was an issue regarding recognizing the revenues of New England Travel in the quarter that it was acquired, which I think was the quarter ending February of 1969.

The problem was -- well, the problem became that National Student Marketing had put out a significant amount of shares of stock to acquire the company and was not allowed to recognize the revenues as of the six months ending February 28, if that's the right period, because New England Travel performed its services or completed its services in the summer months of the year by the fact that they were sending students overseas on tours.

Q. Wasn't it, sir, suggested on behalf of the company that it would be appropriate to recognize some portion of the income for New England Travel because deposits had been obtained and it was clear these were irrevocable deposits?

MR. VELIT: May we just fix a time, your Honor?

Q We are talking about the spring of 1969, is that correct, sir?

A That's correct.

Q Wasn't it the company's position that New England Travel should be allowed to recognize some of its income at the time the deposits which it received could not be refunded any longer?

A That's correct.

Q Do you recall, sir, that it was suggested on behalf of the company that New England Travel be allowed to recognize income constituting gross profit in the amount of

approximately $265,000 on this basis?

A That could be correct. I don't recall the figure.

Q Let me show you, sir, what I have marked Natelli Exhibit F for identification, ask you to look at that, sir, particularly the line I will direct your attention to.

Does that refresh your recollection that the amount of gross profit that the company was proposing to recognize was approximately $265,000?

A Yes, it does.

Q Isn't it a fact, sir, that Mr. Natelli insisted that this could not be done?

A Yes, it is.

Q Isn't it a fact also that Mr. Randall and others at National Student Marking disagreed with Mr. Natelli and asked for an opportunity to review this matter with others at Peat Marwick above Mr. Natelli; is that correct?

A That's correct.

Q And the result was that the people above Mr. Natelli agreed with him, is that right?

A The people agreed -- at Peat,Marwick agreed with Mr. Natelli?

Q Right.

A They did.

Q And that income wasn't recorded?

A It was not.

Q Was another issue that was discussed with Mr. Natelli the proposal by the company to use percentage of completion accounting to account for the income of a subsidiary called National Manpower Register?

A It could have been, Mr. Martin.

I don't recall that.

MR. MARTIN: I'm sorry, your Honor. I just need a minute to locate a document that I thought I had.

(Pause.)

I will show Mr. Velie first what I'm going to show the witness.

Q I just want to show you, sir, an entry in the Peat, Marwick, Mitchell proxy binder and ask you if that refreshes your recollection, sir--

MR. VELIE: The record should reflect that the proxy binder is Government's Exhibit 13 in evidence.

MR. MARTIN: That is correct.

Q -- regarding the fact that Peat, Marwick and Mitchell refused to allow the company to book sales in the amount of over $200,000 for National Manpower Register.

A That entry appears to be reversing an entry that had reflected that, that is correct.

Q Does that also refresh your recollection, sir, that the amount that that affected gross profit was roughly $127,000?

A It is roughly that, yes.

Q Is it a fact, Mr. Kurek, that it was because of the positions that Mr. Natelli had taken with regard to New England Travel and National Manpower Register that the officers of the company expressed the thought that perhaps

perhaps Peat, Marwick and Mitchell should be replaced as the auditors for National Student Marketing, isn't that correct?

A That I'm not sure of. I don't recall why they made those remarks.

Q It is clear, as Mr. Stillman brought out the other day, that at the Finance Committee meeting of May 19, 1969, Mr. Randall and Mr. Walther expressed the view that Peat, Marwick & Mitchell was not handling the National Student Marketing account in an agressive way, isn't that true?

A That was brought out the other day, yes.

Q And again at the Finance Committee meeting of July 7, 1969, there was some question as to whether or not Peat, Marwick & Mitchell should be retained as the auditors of National Student Marketing, isn't that correct?

A That is correct.

Q I believe you told us the other day, sir, that there were times when you had difficulty getting Mr. Randall to understand the seriousness of the matters you were attempting to raise with him, is that correct?

A That's correct.

Q And did you for that reason have to state things perhaps even more strongly than you believed them at the time to try and get his attention?

A Yes.

Q Do you recall testifying about a conversation that you had with Mr. Natelli prior to the time that he attended the Finance Committee meeting in June 1969?

A Are you talking about the June 3rd meeting?

Q That's right.

A I do recall that meeting.

Q I'm going to ask you, sir, if you would look at your grand jury testimony of December 11, 1973, page 51. Would you read to yourself beginning with line 23, on page 51.

A How far down do you want me to read, to here?

Q Yes.

A I have read that.

Q Did this refresh your recollection, sir, that Mr. Natelli did not in this conversation --

A I couldn't hear you.

MR. VELIE: I object to the form of the question, your Honor.

Q Does that refresh your recollection, sir, that Mr. Natelli did not refer to anyone loosing his certificate in his conversations with you?

MR. VELIE: There's been no showing that his recollection needs refreshing and the proper way to impeach from grand jury testimony is to read it out loud and ask him

him if that's what he said.

I object to the form of the question.

THE COURT: To begin with, I don't quite understand that this is a refreshment of recollection problem.

MR. MARTIN: I would be happy, your Honor, to talk about some of the problems that this examination raises at the side bar, if your Honor --

THE COURT: No, we don't need a side bar conference.

What I'm asking you is, I don't really recall that he needs his recollection refreshed. If you want to develop that he does, fine.

I don't understand that he said that he did.

Q Having read that, I will ask you the question.

Did Mr. Natelli say anything about somebody losing his certificate at the meeting as best you can recall?

A No, he didn't say anything about anybody losing their certificate. Any specific person, Mr. Martin?

Q The question is, did he mention people losing their certificate or was that something you added on your own?

A No, I believe that was -- he mentioned that and there was a memo that I had made that day or the day after setting forth the things that were discussed in the meeting. The way it was in the memo is the way I remember it in the meeting.

Q Is that the way you testified about it in the grand jury, sir?

MR. VELIE: I object to that question. He can read it out loud.

MR. MARTIN: He has seen his grand jury testimony.

THE COURT: The rest of us have not. I think the better way would be, as Mr. Velie suggests, if you want to ask him about that in that way, I would certainly permit it.

MR. MARTIN: I think I will just leave it at that, your Honor.

Q Do you recall, Mr. Kurek, testifying at this trial, Page 258, as to the circumstances at the print er on the evening of August 14 or the morning of August 15 that Mr. Randall was advised that Mr. Natelli would not permit the inclusion of the Pontiac contract in the proxy numbers?

MR. VELIE: Your Honor, I object to that characterization of the evidence. There is a transcript --

MR. STILLMAN: I object to the speaking objections, your Honor.

THE COURT: Gentlemen, again there is something that can be done here so simply to avoid all this that I wonder why we don't do it.

MR. MARTIN: Fine, your Honor.

Q Do you recall giving this testimony:

"Q All right. Did Mr. Randall join the conversation or have a similar conversation later in the morning?

"A Later in the morning Mr. Randall was in the room. I don't know whether I told him or whether Mr. Natelli told him, but he was made aware of the fact that Pontiac, in the presence of the same group that I just mentioned, was not going to remain on the books.

"Q Approximately what time was this?

"A This is along about 3:30 or 4:00 o'clock inthe morning.

"Q All right. What did Mr. Randall say, if anything?

"A Mr. Randall said, well, I have an Eastern commitmer an Eastern commitment. Can we include that in the May 31st statements? I don't think I replied and I don't know that anybody replied."

That is not an accurate description, sir, is it, of how the Pontiac commitment came to be written off the books of the company?

A That is when I understand Mr. Randall was made aware of the fact that it was not going to be booked, a definite one. There were things leading up to that, but that is the way I remember it culminating.

Q Did you testify to any of those things leading up to that in your direct examination?

A Did I --

MR. VELIE: I object to the form of the question, your Honor.

Q Is the first th ing that happened, Mr. Kurek, that Mr. Natelli said the Pontiac commitment cannot stay on the books and Mr. Randall said, I have an entry?

A That is not the first thing that took place.

Are you talking about 3:30 in the morning?

Q Is that the way when Mr. Natelli first expressed the fact that Pontiac was not going to stay on the books, the first thing that happened is that Mr. Randall said, I have got an eastern contract?

A That is what I remember the conversation.

1 2B

Q No question about it? "Hey, Tony, how come, it's 3:30 in the morning, we have had this on our books for months and all of a sudden you spring this on us at the printer," nothing like that?

A He may have. I don't remember that part of it. I told you what I remembered of it.

Q Isn't the fact, Mr. Kurek, that Mr. Natelli had consistently taken the position that the Pontiac commitment could not remain on the books, should not be booked, because there was no binding commitment letter?

A He had taken the position earlier that it was not going to stay on the books. I don't recall about the letter. There was a letter. Now, I don't remember whether it was the letter or whether no work had been done or what, Mr. Martin.

Q Do you recall being asked these questions and giving these answers, Page 37 of your grand jury testimony, December 11, 1973.

You appeared before the grand jury, Mr. Kurek. I wasn't there, is that correct?

A That's correct.

Q Mr.Stillman wasn't there?

A No, he wasn't.

Q Not even your lawyer was there, isn't that right?

A That's correct.

Q Just the Assistant U. S.Attorney was in the room asking you questions with the grand jury, is that correct?

A That's correct.

Q Do you recall being asked this question by Assistant U. S.Attorney McGuire:

"Q Isn't it a fact, Mr. Kurek, that Mr. Natelli took the position consistently that whatever documentation he was shown on the Pontiac commitment wasn't strong ehough to persuade him that a contract of that size should be taken into current income?

"A That is correct, because of later events."

Were you asked those questions, did you give those answers in the grand jury?

A Yes, I did.

Q Isn't it a fact one of the things that Mr. Natelli was concerned with when he spoke to you on June 3, 1969, was the fact that this large commitment from Pontiac had been booked by the company when there was not a commitment letter?

A I am not sure, because there was a commitment letter, as I recall.

Q Wasn't it Mr. Natelli's position that that commitment letter was not a binding contract, an obligation,

and therefore the income should not have been booked on it?

A I don't know whether that was his -- I don't recall whether we discussed Pontiac on June 3 or not.

Q In any event, you attended a meeting on June 9, is that correct?

A That's correct.

Q Isn't it true that at that meeting Mr. Randall stated, in discussing these commitments, that the problem was the verbal commitments, that all of the written agreements had been fulfilled and there had been no writeoffs of the written commitments?

A That is the way that it was recorded, yes.

Q Isn't it a fact that Mr. Joy also said that, "You have to look at the situation that the written commitments have been good, that all the negatives were verbal"? Wasn't that statement made?

A That's correct.

Q Didn't Mr.Fergusson also echo those same sentiments?

A I believe he did.

Q Didn't you have with you, sir, at that time the schedule which is Government Exhibit 15 in evidence?

A Yes, I did have that schedule.

Q Mr. Velie, I believe, asked you about the verbal

commitments on that schedule. I would like to ask you about the written commitments.

Will you look at the schedule, Page 1. Is the first entry reflecting a written contract one for American Airlines?

A No. What I have got --

Q Sheet 1 of 9.

A Sheet 1 of 9 has Clairol on it here.

Q As a written commitment?

A No.

Q I am talking about the commitments that reflect a written agreement.

A Oh, yes, American Airlines is the first one that indicates a written agreement.

Q That indicates the amount of $17,037?

A Yes, it does.

Q That amount was billed and collected, is that correct?

A Yes.

Q And the next written contract referred to is one for Waldorf-Astoria?

A Yes, it is.

Q In the amount of $3790, of which $2527 was billed and collected at that point, is that correct?

A That is correct.

Q And none written off?

A That's correct.

Q The next written contract referred to on that schedule is one for National Career Expo, is that correct?

A That's correct.

Q In the amount of $6095?

A Correct.

Q $6095 was billed, is that correct?

A That's correct.

Q And none written off?

A That's correct.

Q The next is an entry for the U.S. Navy, a contract for $5,400, is that correct?

A That's correct.

Q $5400 was billed and collected on that account, is that correct?

A That's correct.

Q The next contract referred to is a contract for Campana, is that correct?

A That's correct.

Q For $56,250, of which $31,875 was billed and collected as of that time, is that correct?

A That's correct.

Q The next contract is a Chrysler contract of $112,000, is that correct?

A That's correct.

Q On which $112,000 was billed and collected, is that correct?

A That's correct.

Q The next is a Nationwide Insurance letter for $5300, is that correct?

A That's correct.

Q On which $2650 was billed and collected?

A That's correct.

Q None written off?

A Correct.

Q The next page there is a Barnes-Hind contract for $125,000 on which none has been billed and none written off, is that correct?

A That's correct.

Q The following page there is a contract for Mitchum in the amount of $38,250, is that correct?

A That's correct.

Q On which $38,241 was billed and collected?

A That's correct.

Q Then there is a Hanes contract for $24,120 on which $6,374 was billed and none written off, is that correct?

A Yes.

Q The next is a Barnes-Hind contract for $28,000, is that correct?

A That's correct.

Q Of which $23,800 had been billed and collected, is that correct?

A Yes.

Q The next is a commitment for Pan-Am Coffee in the amount of $19,500, is that correct?

A Yes.

Q $19,500 was billed and collected on that account?

A Yes.

Q The next is a contract for the U.S. Navy for $1000 which was booked, is that correct?

A Yes.

Q On which $1250 was billed and collected, is that correct?

A Yes.

Q Page 4, these are February 28, 1969 commitments, is that correct?

A Yes.

Q On that page the first one is a Careers Ink contract for $900 on which $600 at that point had been billed, is that correct?

A Yes.

Q None written off?

A Correct.

Q Can you read the next entry for me?

A I believe it is Arden for Men.

Q That is a contract on which nothing had been billed and nothing written off, is that correct?

A That's correct.

Q In the amount of $25,315.

Then there is a contract for American Airlines of $11,250, which was billed and collected, is that correct?

d 3A

Q Then there is a Plymouth letter for $52,163 on which nothing had been billed or written off, is that correct?

A Yes, it is.

Q Then there was a Chevrolet contract for $22, 160, is that correct?

A Yes, it is.

Q That amount had been billed to Chevrolet?

A Yes.

Q The next contract listed is American Union -- can you read that word, sir?

A Students.

Q -- students for $300 which was billed, is that correct?

A That's correct.

Q Then there was a $27,000 Readers Digest contract, is that correct?

A Yes.

Q That $27,000 was billed, is that correct?

A Yes.

Q Then there was a Gillette contract for $19,500, is that correct?

A Yes.

Q On which $6,500 had been billed?

A Yes.

Q And none written off?

A Correct.

Q Then there was a Capital Records contract, $4,488, and that $4,488 was billed and collected, is that correct?

A Yes.

Q Then there is a Security Pacific contract for $3,350 which was billed, is that correct?

A That's correct.

Q The next is the Pontiac commitment, C. letter, and that is in the amount of $261,787, is that correct?

A That's correct.

Q That is the contract that Mr. Natelli insisted be taken off the books, isn't that right?

A That's right.

MR. VELIE: Can you fix the time on that? You are not talking about the June meeting?

MR. STILLMAN: Excuse me.

MR. MARTIN: I am talking about the fact that was testified.

THE COURT: Never mind.

Just put your next question.

Q You said that one of the things that was discussed when Mr. Natelli talked to you in early June was the fact that commitments could go as high as $4 million, is that

correct?

A That's correct.

Q They never did go that high, did they, sir?

A I believe they did.

Q When did that occur?

A By August of '69, I guess, the period we were talking about.

Q I show you a copy of 46C, which is the National Student Marketing Annual Report for the year ended 8-31-69, and ask if that refreshes your recollection?

MR. VELIE: Page?

MR. MARTIN: Page 49.

A What about page 49?

Q Does that refresh your recollection that the amount of unbilled receivables reported by National Student Marketing at August 31, 1969--

MR. VELIE: Objection. I don't believe there is any showing he needs his recollection refreshed.

MR. STILLMAN: Can't hear you, Mr. Velie.

MR. VELIE: He doesn't need his recollection refreshed.

THE COURT: As I understand it, Mr. Kurek, you have stated that your recollection is about $4 million, right?

THE WITNESS: I said that I thought they may have

gone that high.

THE COURT: Since I don't know what is in this, Mr. Martin, I don't know how to respond to this objection. I don't know what it shows.

Surely there must be some way to get around this kind of a thing.

MR. MARTIN: It is right there, your Honor.

THE COURT: Whatever it is, you want him to read it?

MR. MARTIN: I just want to know if it refreshes his recollection.

THE COURT: Why don't we just read this. Wouldn't that be simple? It is in evidence.

Q What does that report show as to unbilled receivables?

A On page 42, on the balance sheet, unbilled receivables are shown here as $2,800,188.

Q Does the footnote to that reflect the components of those unbilled receivables, sir?

A Yes, it does.

Q What was the parent company contribution to that unbilled receivable?

A Well, the footnote indicates that $1,826,962 was fixed fee type contracts.

Q What is the other component of that, sir?

A Market research studies are $973,226.

Q That $900,000 some odd was for W. M. Simmons and Company, isn't that correct?

A That's what the footenotes says, yes.

Q Whose reports were prepared by Lybrand, Ross Brothers and Montgomery or Coopers and Lybrand, as it became known?

A I believe so.

Q Isn't it the fact, sir, that the reason that the Pontiac commitment was written off is that there was not a commitment letter sufficient to satisfy Mr. Natelli?

A That's true.

Q It was not the fact that no amount had been booked on that contract or billed on that contract, rather, because those services were supposed to be for a 1970 program, isn't that correct?

A I don't recall that.

Q Isn't it a fact that since December of 1968 Mr. Natelli had been insisting that a written commitment form be used?

A Yes.

Q I show you what has been marked Defendant Natelli Exhibit G for identification and ask you if yo u can identify

that, sir?

A Yes, I can.

Q What is that, sir?

A It is a copy of a commitment letter that was prepared, as I remember, by Mr. Natelli and Mr. Davis.

Q Mr. Davis was the lawyer for National Student Marketing, is that right, their house counsel?

A Yes.

Q Was that prepared shortly after the December meeting you referred to?

A It was after the December meeting. I don't know how shortly thereafter.

Q Was it in December, as best you recall?

A It was in December or very early January, Mr. Martin, as I can recall.

MR. MARTIN: Your Honor, at this point I would offer Natelli Exhibit G for identification into evidence.

MR. VELIE: No objection.

xx (Defendant Natelli Exhibit G received in evidence.)

MR. VELIE: You are not offering the portion on it that has another exhibit mark G?

MR. MARTIN: No.

THE COURT: Do I understand you that the house

counsel, Davis, and Natelli combined to prepare that form sometime in December of '68?

THE WITNESS: December of '68 or January of '69. That's what I understood.

THE COURT: All right.

Anything else?

MR. MARTIN: Yes, your Honor.

Q You were asked about the Pontiac letter which is Government's Exhibit 12 in evidence.

Is it not true that that letter did not state that it was a commitment, it simply stated that Pontiac was planning to use National Student Marketing Services?

MR. VELIE: Can I have that question read back, please?

The COURT: Again, gentlemen, the letter says what it says. The question that he wants to ask him apprently is does it say what it says.

Now, this baffles me. Do we need to do this?

MR. MARTIN: Your Honor --

THE COURT: Did you have anything to do with drafting this letter?

THE WITNESS: The letter that Mr. Davis and --

THE COURT: No, no. Apparently now you have this Pontiac letter in front of you, exhibit whatever it is.

THE WITNESS: 12.

THE COURT: You had nothing to do with that, did you?

THE WITNESS: No, I didn't, not in the drafting.

THE COURT: Both of you gentlemen baffle me. I don't understand what we are doing. I really don't.

If you want to read this again to the jury you may, but I don't know why we ask this witness about this when he says he didn't write it and it says what it says.

MR. MARTIN: I don't want to argue factual matters, but I do think it relates to his direct testimony, your Honor, as to the reason for the write off of this commitment, and that is why I am asking him.

THE COURT: You didn't ask him that. Start over again and reshape it.

You puzzle me, and I think with some reason, now that you answer me. Rephrase it.

Q The question, Mr. Kurek, is, wasn't the reason that Mr. Natelli insisted that the Pontiac commitment had to be written off because there was not a binding commitment letter?

THE COURT: That's been asked and answered. Sustained.

Q Mr. Kurek, did you have any responsibility for writing off the Pontiac commitment?

A As vice president of finance, I assume I had responsibility.

Q Did you take the position that it should be written off?

A I don't think that I did.

Q Do you recall giving this testimony, being asked these questions at page 129 of your SEC testimony, beginning at page 129, question by Mr. Belden.

"Q This Pontiac commitment that you are referring to, that had some 960 some thousand?

"A It could have.

"Q Do you recall why it was written off?

"A Because we could not get any supporting document for such a large contract and we didn't want to put a verbal one on at that time of that amount, and paper work necessary to satisfy myself and Peat, Marwick & Mitchell was not ob-

tained, so we would not allow it to stay on the books."

Do you recall being asked those questions, sir, and giving those answers?

A Yes.

Q That testimony was not quite accurate, is it, sir?

A Well, it was my best recollection when I answered it, Mr. Martin.

Q Isn't it a fact, sir, that you had nothing to do with the write off of that commitment and, indeed, tried to keep Mr. Natelli from writing it off?

A I don't know that I tried to keep Mr. Natelli from writing it off.

Q Did you have occasion --

A He was the one insistent on it being taken off the books.

Q Did you have occasion, Mr. Kurek, on August 7, 1969, to write a memorandum to Mr. Randall?

A This appears to be a copy of a memorandum to Mr. Randall.

Q From you, sir?

A Yes.

MR. MARTIN: I offer it in evidence, your Honor.

THE COURT: That is Exhibit number what?

MR. VELIE: H.

MR. MARTIN: H, your Honor.

(Pause.)

MR. MARTIN: I have a copy for the Court.

THE COURT: Thank you.

MR. VELIE: No objection whatever.

xx (Defendant Natelli Exhibit H for identification, received in evidence.)

MR. MARTIN: Your Honor, may I read Exhibit H to the jury?

THE COURT: Surely.

(Mr. Martin read from Defendant Natelli Exhibit H in evidence to the jury.)

Q Isn't it a fact, sir, that when Mr. Natelli raised this with you, you tried to get him off the subject?

A The memo says I avoided the problem, avoided the subject.

Q Is avoiding the subject with Mr. Natelli on some of these issues why you got $7500 in cash from Cort Randall for at the end of April 1969?

A Not, it is not, Mr. Martin.

Q There is no question that you did get $7500 in cash, is there, sir?

A That is correct.

Q I show you what I marked Defendant Natelli's Exhibit

I for identification and ask you if you can identify that?

A It appears to be the check that paid me the $7500, a copy of it.

MR. MARTIN: Offer it in evidence, your Honor.

(Pause.)

MR. VELIE: No objection.

xx (Defendant Natelli Exhibit I for identification, received in evidence.)

Q Did you ever have any leasing in a computer firm?

A Yes, I did.

Q Did that computer leasing firm do business with National Student Marketing Corporation?

A Yes, it did.

Q Were you the chief financial officer responsible for determining what computer leasing firm you would use?

THE COURT: Your words are very hard to understand, Mr. Martin.

Would you repeat that again, please.

MR. MARTIN: Surely.

THE COURT: The reporter and I are having a devilish time. I don't know how Mr. Kurek hears you.

THE WITNESS: I'm straining.

THE COURT: Please enunciate more clearly. It is so hard to follow you.

MR. VELIE: Excuse me one second. Before it is repeated may we come to the side bar briefly?

THE COURT: One thing at a time, Mr. Velie.

MR. VELIE: This is about what I heard Mr. Martin is saying.

THE COURT: Maybe you heard correctly. I understand that. Let's get the question out so I would have some intelligence appraisal of what you want to talk to me about at the side bar. You see my problem?

Go ahead, sir. Put your question again, Mr. Martin.

Q Were you as chief financial officer of National Student Marketing responsible for determining what computer leasing firm National Student Marketing would use?

THE COURT: What computer leasing firm?

MR. MARTIN: Yes, your Honor.

MR. VELIE: I renew my request.

THE COURT: I don't see why we have to get to the side bar. If you want to object to this, object.

MR. VELIE: I would like an offer of proof. Otherwise I will object to it as plainly irrelevant, a complete side issue and collateral to the case.

MR. STILLMAN: I object to these speaking objections. Mr. Velie knows --

THE COURT: I just asked him to object. He did. He didn't speak, he just objected. I'm going to overrule the objection and take this and see what develops.

Go ahead.

MR. VELIE: Very well, your Honor.

Q Do you have the question, Mr. Kurek?

A You asked me that as chief financial officer of National Student Marketing did I have the responsibility for selecting what computer leasing corporation was used?

Q Yes.

A Yes, I did.

Q Did that business go to the computer leasing firm in which you had an interest?

A Some of it did.

THE COURT: What was the name of that firm in which you had a financial interest?

THE WITNESS: Diversified Data.

THE COURT: Diversified Data?

THE WITNESS: Yes, Inc.

THE COURT: Inc., thank you.

Q You told us that at the printer, after Mr. Randall mentioned the Eastern contract, you went to call or to speak on the phone to Mr. Dennis Kelly, is that correct?

A I spoke with him on the phone.

Q Was the purpose of that call to get some information as to the gross amount of the contract and the costs associated with that?

A Yes, it was.

Q Was the fact that was being discussed at the time a suggestion by Mr. Randall that to avoid reprinting all of the figures in the proxy, that the Eastern contract be simply substituted for Pontiac without making any change in the proxy figures?

A He may have stated that. I don't recall. I know he wanted to use the Eastern inplace of Pontiac.

Q He did not want the proxy to have to be reprinted, is that correct?

A That maybe correct.

Q There came a time you told us when Mr. Kelly appeared at the printer with a letter from Eastern, which is Government Exhibit 18.

MR. MARTIN: Do you have that?

(Pause.)

Q Mr. Kelly arrived with that, is that correct?

A That is correct.

Q When Mr. Natelli saw that letter, did he say that the Eastern contract can now be booked?

A I don't know whether he did or didn't. I know we stayed there all that day. I don't recall what the specific words were. We were up since the day before, too. I don't recall what Mr. Natelli's specific answer was when he got the letter.

Q Is it your testimony, sir, that the decision to book the Eastern contr act was made on that day?

A I don't know that I testified to that.

Q I ask you the question: Was the decision made that day?

A I don't recall whether the decision was made that day. From proxy drafts that I have seen, it would appear to me it must have been made later.

Q Did Mr. Kelly bring anything else with him when he arrived on that Friday?

A I don't recall, Mr. Martin.

Q I show you, sir, what is marked as Defendant Natelli Exhibit J for identification, and I show you, sir, the top page and ask you, do you recognize that handwriting?

A Not offhand I don't.

Q Looking at Page 2241 and then on to Page 2267 and the page just before it, do you recognize that document, sir?

A Can I look through here?

Q Surely.

MR. MARTIN: I have a copy for the Court.

(Pause.)

A It looks like a proposal regarding that Eastern contract that we have been discussing.

Q Is it the fact, sir, that when Mr. Kelly came to the printer on August 15 he brought with him a copy of the proposal that had been made to Eastern Airlines in May of 1969 and discussed that program with Mr. Natelli?

A He may have. I don't recall.

Q Didn't he, sir, at that time go over point by point each of the items in that program, explaining what the program was and what the various costs were connected with those programs?

A I don't recall it, Mr. Martin.

Q The sheet, the third down from the top --

MR. VELIE: Page, please?

MR. MARTIN: Third from the top of that exhibit.

Q -- do you recognize what those sheets are?

A This appears to be a time log, account executives time log.

Q Of what account executive?

A Mr. Bushnell.

Q What was Mr. Bushnell's association with the Eastern contract?

A At this point?

Q That's correct.

A I don't know. I had talked with Kelly the morning before on the phone about it.

Q Was Mr. Bushnell, sir, the account executive who dealt regularly with Eastern Airlines?

A He had dealt with them,yes.

Q Isn't he the person to whom the commitment letter from Mr. Mullen is addressed?

A Yes, it is.

Q Isn't it the fact, sir, that Mr. Natelli asked for and was provided with Mr. Bushnell's time records relating to his work on the program which is the subject of the commitment letter before a decision was made that that commitment could be booked?

A I don't recall whether he did or didn't.

MR. MARTIN: Your Honor, I would offer Natelli Exhibit J for identification into evidence. These are papers taken from the work papers of National Student Marketing.

MR. VELIE: I believe that is what they are.

VOIR DIRE EXAMINATION

BY MR. VELIE:

Q Let me see if I understand your testimony, Mr. Kurek.

Do you recognize the portion of this Exhibit J which appears at Page 2267 and the page preceding it forward? It wasn't clear to me whether you recognized it or not.

A I didn't say I recognized it. I said it appeared to be a backup of the Eastern contract.

Q Are you able to tell us as you sit here now whether this thing appeared at the Pandick Press or not?

A No, I am not. I don't recall any of this that he is talking about specifically at Pandick Press.

Q Let me ask you about the material that appears at the top.

Are you able to recognize from the third sheet on --

MR. VELIE: The record should reflect it is 2242.

Q The thing that was just shown to you by Mr. Martin, do you recognize those sheets?

A I recognized it as an account executive time log. What is says there.

Q Do you know if those were available at the Pandick Press on August 15?

A I don't recall whether they were there or not.

MR. VELIE: I have no objection to the exhibit just the same.

THE COURT: I couldn't hear you, sir.

MR. VELIE: I do not object to the exhibit.

THE COURT: You do not object?

MR. VELIE: No, sir. I don't think it is relevant on this witness' testimony, but it can come in on the basis that it is coming in.

THE COURT: There being no objection, it will be received.

xxx

(Defendant Natelli Exhibit J for identification was received in evidence.)

End 4B

k 5A

jhb-1 Kurek-cross

MR. MARTIN: Your Honor, I think we will agree that these are papers taken from the proxy work papers of Peat, Marwick, Mitchell.

Is that correct, Mr. Velie?

MR. VELIE: Shall we locate them? I believe that is what they are.

THE COURT: Gentlemen, since somebody thinks this is important, and since no one has objected, let's move along. Let me point out to you the time and recall our colloquy when we last met the evening of last week. Let's move along, please.

MR. MARTIN: Fine, your Honor. May I distribute copies of these? I just would like the jury to have an opportunity to look at this.

THE COURT: Sure.

MR. MARTIN: I have copies for each of the jurors.

THE COURT: Sure. If you think that you want each of the jurors to have a copy, fine.

MR. MARTIN: I think I am one or two short.

THE COURT: This is quite an extensive group of xeroxed documents. Is there something that you want the jury in particular to look at?

MR. MARTIN: Your Honor, I would like them to look at the program which is attached at the rear of that

document.

MR. VELIE: Your Honor, perhaps to cut through this, the witness has told us he doesn't know specifically if these papers were at the place in question. Perhaps if Mr. Martin wants to read some portion of it he can do it when the witness isn't on the stand.

THE COURT: Mr. Velie, I am sorry, but you didn't object to these documents. He is entitled to show anything in evidence to the jury. I am simply trying to cut down the time and the confusion.

Now, is there something you would like to flag for the jury, Mr. Martin? Please do.

MR. MARTIN: Your Honor, I would like to have the jury have an opportunity to peruse what appears at approximately the back half of that which is entitled "Eastern Airlines Youth Marketing Plan, 1970," submitted May 9, 1969. The one page that starts that presentation is unnumbered. It appears just above 2267.

(Pause.)

THE COURT: Do we have any more cross-examination of Mr. Kurek?

MR. MARTIN: About 10 or 15 minutes, your Honor.

BY MR. MARTIN:

Q I take it, sir, you don't know whether or not this

information contained in this exhibit was available to Mr. Natelli before the decision was made that the Eastern commitment could be booked, is that right?

THE COURT: Do you understand what he means, Mr. Kurek?

THE WITNESS: Well, not exactly, because --

THE COURT: Do you mean the contents of these documents which are collectively known as Natelli J?

MR. MARTIN: That is correct.

THE COURT: Do you have any idea whether Natelli ever saw any of this business?

THE WITNESS: I don't know whether he saw it or not. I would have -- well, I don't know whether he saw it or not that day, which is what you earlier asked me.

Q You can't recall whether or not Mr. ~~Natelli~~ Kelly brought that presentation with him?

A I don't recall whether Mr. ~~Natelli~~ Kelly brought that down there or not.

Q Sir, you were asked about a draft of a comfort letter that you were given on I believe Thursday, October 30, isn't that right?

A Yes.

Q Did you ever see the final comfort letter, sir?

A I don't know that I ever saw it or not. I

saw comfort letters, what I remember as a couple of comfort letters. I don't know what was the final one or what I ended up seeing.

Q Would you look at Natelli Exhibit K for identification and tell me whether you have seen that document in its entirety or any part of it before.

A Well, I do recall seeing the letter from Mr. Holton of November 3 to the board of directors. I have seen that before.

The letter of October 31 to Epley, I am not sure of.

And I can't say for sure about the comfort letter.

Q Let me ask you this, sir: Were you aware some time around October 31 or shortly thereafter that Peat, Marwick, Mitchell had suggested to both National Student Marketing Corporation and Interstate National Corporation that in view of the comfort letter adjustments that had been made the companies should consider submitting corrected interim unaudited financial information to their shareholders prior to proceeding with the merger.

MR. VELIE: Excuse me. I didn't understand that question and I would like to hear it again.

THE COURT: Do you, Mr. Kurek? Do you understand that?

THE WITNESS: No, I don't.

THE COURT: Please rephrase it.

End 5A

Q Were you aware shortly after October 31 that in its comfort letter Peat, Marwick, Mitchell had suggested to the directors of both corporations that they submit new unaudited figures to the shareholders before proceeding with the merger.

A I don't understand it. What is puzzling me is I thought that the closing took place on October 31 and I don't --

Q Look at the next to the last paragraph, the third from last paragraph of the document in front of you.

Were you aware that that suggestion was made at the time the comfort letter was being discussed?

MR. VELIE: I object to the form of the question, only to "at the time the comfort letter was discussed."

Would you please pick a date, Mr. Martin.

Q Were you aware on October 31 that Peat, Marwick, Mitchell suggested to the parties that new financial statements for the period May 31, 1969 should be submitted to the shareholders before the merger was consummated?

THE COURT: Let's be a little bit more precise. I will sustain an objection to form further here.

Were you aware, sir, at any time on or after October 30 that among other things Peat Marwick Mitchell said, and I quote, "We believe the company should consider

submitting corrected interim unaudited financial information to the shareholders prior to proceeding with the closing?"

MR. VELIE: Your Honor, did you say October 30? That is important here.

THE COURT: On or after October 30.

THE WITNESS: I am not sure. There was so much confusion around the comfort letter, I don't know all of what was said or what wasn't said. I thought there were a draft or two of the comfort letter. That's why I am reluctant to identify --

THE COURT: You don't recall this particular observation or suggestion of Peat, Marwick?

THE WITNESS: I don't recall it.

THE COURT: All right.

THE WITNESS: And I recall the closing taking place.

THE COURT: Fair enough.

Q I show you what hasbeen marked Natelli Exhibit L for identification and ask you if you will tell us what that is, sir.

A It is a copy of a letter to Mr. Natelli dated November 20, 1969 from Mr. Davis.

Q Who was Mr. Davis?

A Mr. Davis was the general counsel for NSMC.

Q You received a copy of that letter?

A I believe I did.

Q There is also copy shown to Mr. Epley.

A It is indicated he was copied on it.

Q Do you know who he was?

A Mr. Epley was an attorney with White and Case.

MR. MARTIN: I will offer Natelli Exhibit L for identification in evidence.

MR. VELIE: I have no objection to L.

MR. MARTIN: Did I give you a copy of L, your Honor?

THE COURT: Thank you.

MR. MARTIN: Any objection, Mr. Stillman?

MR. STILLMAN: No.

xx (Defendant Natelli Exhibit L received in evidence.)

MR. MARTIN: May I read from Defendant Natelli Exhibit L to the jury, your Honor?

THE COURT: Certainly.

MR. MARTIN: Natelli Exhibit L, ladies and gentlemen, is a letter on the letterhead of National Student Marketing Corporation.

It is dated November 20, 1969 and it is addressed to Mr. Natelli at Peat, Marwick, Mitchell.

(Mr. Martin read from Defendant Natelli Exhibit L

in evidence.)

Q Isn't it true, Mr. Kurek, that Stuckey & Speer, Inc., the Cottrell Bus Companies and the Ritzenthaler Bus Companies were all companies acquired by National Student Marketing after October 31, 1969?

A I believe they were acquired after October 31.

Q Isn't it also true, Mr. Kurek, that according to the agreements that they had entered into with National Student Marketing they were not getting comfort letters, as Interstate did? Isn't that right?

A That's correct.

Q Isn't it a fact, Mr. Kurek, that Mr. Natelli was aware of that fact and insisted that these three companies be given copies of the comfort letter so that they would know the adjustments that Peat, Marwick felt should be made to the May 31, 1969 statements?

A I can't answer yes to everything that you said.

Q What do you have problems with, sir?

A The way I remember it, I don't remember him insisting -- and I am not saying he didn't -- that they received a copy of the comfort letter, but I do remember his inquiring as whether these companies had been advised as to the contents of the comfort letter. That is the way I remember it.

Q Do you recall being asked this question, giving this answer, at page 86 of your grand jury testimony of December 13, after you had been shown a copy of that letter:

"Q What led up to Mr. Natelli's requesting a written confirmation that the Stuckey & Speer and bus company people had been advised of the comfort letter?

"A I can't remember the specifics of it, but I think Tony Natelli was concerned that these companies were being acquired after Peat, Marwick & Mitchell had found that there were significant adjustments to the May 31st statements in their opinion and wanted -- but their acquisition agreement did not call for a comfort letter, but he wanted to be sure that they were being told of the ingredients of the comfort letter.

"That's what I remember about it."

Do you recall being asked that question and giving that answer in the grand jury?

A Yes.

Q And was it true, sir?

A To the best of my knowledge.

Q I believe on direct examination you told us about an incident when on the morning of Friday, October 31, you went to Mr. Natelli's office to get the comfort letter and you were told at that time there were problems, is that correct?

A I was told it wasn't ready. That's what I think I remember saying.

Q Isn't it a fact that you were back in Mr. Natelli's office later on that day.

A Yes.

Q And weren't you present, sir, in Mr. Natelli's office at a time when he was speaking on a speaker phone to Mr. J. Epley of White and Case?

A Yes.

Q And Mr. Epley was a partner in the law firm of White and Case and they were the outside counsel to your corporation, National Student Marketing, is that correct?

A That's correct.

Q Isn't it a fact that during the course of that conversation about the comfort letter and its adjustments, Mr. Natelli said that the company should go to the SEC with this problem and Mr. Epley said, No, the company was not going to do it?

A That's correct.

Q Did Mr. Natelli ever tell you that was part of a cover up, sir?

MR. MARTIN: No further questions.

THE COURT: Ladies and gentlemen of the jury, we will take a ten-minute recess at this point.

(Recess.)

(In open court, jury present.)

THE COURT: Mr. Velie.

MR. VELIE: I believe my redirect will be brief, your Honor. I have to put before the jury a couple of exhibits that have not previously been identified here.

If I may, I'm going to read a brief stipulation agreed to between the parties to effect that.

It is hereby stipulated and agreed, by and between the United States of America by Paul J. Curran, United States Attorney, Franklin B. Velie, of counsel, and the defendants Anthony M. Natelli and Joseph Scansaroli, by their respective attorneys, John S. Martin, Jr., and Charles A. Stillman, that:

1. Papers from the files of Peat Marwick, Mitchell and Company have been marked for identification with consecutive numbering as follows:

(1) Papers relating to the 1968 NSMC audit, Nos. 1463 through 2151 and

6413 through 7469;

(2) Papers relating to the Proxy statement, Nos. 2152 through 2690
10342 through 11607 and
17494 through 17553;

(3) Papers relating to the 1969 NSMC audits, Nos. 0001 through 1462;
2691 through 6412;
9283 through 10341;
11608 through 11846.

A portion of those papers have been marked as Government exhibits as follows:

GX 3 - PMM 8/31/68 Special Sales Binder (1910 to 1986);

GX 4(A) - PMM 8/31/68 NSMC Asset Binder (1586 to 1710);

GX 4(B) - PMM 8/31/68 NSMC Liabilities and Expenses (1711) to 1835);

GX 4(C) - PMM 8/31/68 NSMC General Binder, Program, Questionnaire, Trial Balance (1463 to 1585);

GX 13 - PMM 2/28/69 and 5/31/69 NXMC Prior Years Statements Proxy SEC Review (2514 to 2690);

GX 17 - 8/9/69 Master Proof (17494 - 17553);

GX 21 - PMM 8/31/69 NSMC Asset Binder (3008 to 3196);

GX 24 - PMM 5/31/69 NXMC Proxy Statement (2152 to 2281);

GX 34 - PMM 8/31/69 NSMC Liabilities & Profit and Loss (3197 to 3310);

GX 35 - PMM 8/31/69 NSMC General Binder (2691 to 2796);

GX 41 - PMM 12/31/69 NSMC Parent Company Trial Balance (0309 to 0357);

GX 42 - PMM 12/31/69 NSMC Fixed Fee Contracts Unbilled Receivables and Accrued Cost of Sales Deferred Sales and Cost of Sales (0792 to 0880);

All of the above papers are business records of Peat, Marwick,Mitchell and Company, ("Peat, Marwick") kept in the ordinary course of Peat, Marwick's business, it being in the ordinary course of Peat, Marwick's business that records of this kind are made and kept, and that the entries therein were made at or about the times indicated thereon.

2. It is further stipulated and agreed that GX 17A is a duplicate original of the August 9, 1969, draft proxy statement for National Student Marketing Corporation ("NSMC").

So stipulated, Paul J. Curran, United States

Attorney, by Franklin B. Velie, John Martin, Attorney for Mr. Natelli, and Charles Stillman, attorney for the defendant Scansaroli.

At this time, your Honor, the Government offers Exhibit 3, Exhibit 17 and Exhibit 17A.

(Pause.)

MR. STILLMAN: I have no objection.

MR. MARTIN: I have no objection.

xx (Government's Exhibit 3, 17 and 17A for identification, received in evidence.)

MR. VELIE: Your Honor, with your permission I would like to have this marked as Exhibit 17B.

THE COURT: Excuse me for interrupting, Mr. Velie. We have this witness on the stand. Can't we complete the redirect?

MR. VELIE: Yes, your Honor. I would like to put some documents before him so he can comment on them to the jury.

THE COURT: All right.

MR. VELIE: That is my purpose, your Honor.

THE COURT: All right.

MR. VELIE: 17B, please. Your Honor, do you have a copy of 17B at this point?

THE COURT: No.

(Pause.)

MR. VELIE: I would also offer 17B as showing side by side pages from three Government exhibits now in evidence, a simple side by side correlation of exhibits now in evidence.

MR. MARTIN: Your Honor, I have no objection obviously to the authenticity of that. It is simply a combination of three documents. I have some question about its relevance at the time. I will reserve those until there are questions asked about it.

THE COURT: All right.

MR. VELIE: I would like to distribute these to the jury at this time, your Honor. They are, as I say, exhibits now in evidence.

xxx (Government Exhibit 17B for identification received in evidence.)

MR. STILLMAN: Can you explain to the jury how this is made so they understand that somebody took these and photocopied certain pages from different exhibits and put them all together and there is no piece of paper that is anywhere else that is this other than that thing that has been prepared for now? Can you tell them that?

MR. VELIE: If I may, your Honor, as Mr. Stillman says -- may I pass these out to the jury and explain?

THE COURT: Yes.

MR. VELIE: Thank you.

(Pause.)

MR. VELIE: If I may proceed, as Mr. Stillman has already said, ladies and gentlemen, as y ou can see, you have a composite there and the heading indicates that one pages comes from Exhibit 17, one from Exhibit 17A and one fromExhibit 25.

You will recall that Exhibit 25 is the final proxy which is in evidence. You will see that Exhibit 17A

and 17 are an identical page except that as you can see someone has written on 17A and made various changes in it.

I think as you can see, this is the same information as it appeared originally, as somebody marked upon it, and then as it appeared in the final proxy thereafter.

REDIRECT EXAMINATION

BY MR. VELIE:

Q Mr. Kurek, I place before you Government Exhibit 17 for identification. Do you recognize that as a draft of the proxy statement in part?

THE COURT: 17 is in evidence.

MR. VELIE: I am sorry, in evidence.

Q Do you recognize that as being part of the proxy that was being printed in draft?

A Yes, I do.

Q Do you see the handwriting on it?

MR. STILLMAN: First page.

Q Do you see the handwriting on the first page and other pages thereafter?

A Yes, I do.

Q Calling your attention to the page which appears as Number 11, also stamped 17498, that is the page which is before the jury in their center panel.

Do you recognize the handwriting on that page, sir?

A Yes, I do.

Q Whose handwriting is that?

A It is Mr. Natelli's.

Q Mr. Natelli's handwriting?

A Yes.

Q Now, sir, I call your attention to Mr. Martin's cross-examination.

At the point when Mr. Martin asked you back there in January or February of 1974 when you were arraigned with these other defendants, Mr. Martin asked you if you made a remark about whether those gentlemen, the two defendants, should have been indicted.

Do you recall your testimony in that area?

A Yes.

Q Now, sir, back there in January or February at that arraignment, were you aware of the existence of Exhibit 17 and of the markings on it by Mr. Natelli when you made that remark or if you did make that remark to Mr. Martin?

A I didn't recall this when I had made that remark.

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Q Now, sir, I call your attention to those markings. It is in evidence. I ask you, do you see a footnote labeled C on that page being scratched out? It is hard to read with the scratch marks on it, but the footnote at C.

A Yes, it is scratched out.

MR. VELIE: Ladies and gentlemen of the jury, you can see that without the scratch marks --

MR. STILLMAN: Your Honor, I must be on another planet. Is this examination or a summation?

THE COURT: I agree, Mr. Velie. It is confusing. Let's stick with asking questions. We will disregard this last comment.

MR. VELIE: I would like to read out loud Paragraph C underneath the scratch marks here.

(Mr.Velie read from Government Exhibit 17 in evidence to the jury.)

Q Now, sir, do you see, Mr. Kurek, in Mr. Natelli's handwriting a substitute paragraph C has been added there instead?

A Yes, there has.

(Mr.Velie read from Government Exhibit 17 in evidence to the jury.)

Q Now, sir, were you aware of this particular substitution when you made your comment to Mr. Martin?

A No, I wasn't.

Q I draw your attention to the line in the footnote itself in which the words "retroactive adjustment for contract losses," Note C, are crossed out and crossed out with it is a figure. Also crossed out is the figure for pooled companies.

Down below I call your attention to an entry where it says "Retroactive adjustment for contract losses," Note C, crossed out, also crossed out a figure, and below that crossed out the figure for pooled companies reflected retroactively.

Can you see, sir, whether the number for the pooled companies has been reduced in the earnings portion of that footnote? Are you able to read it?

A Well, it appears as though it was 389,000-some odd and it has been changed to 368,429.

Q It has been reduced by the loss of National Student Marketing's contracts, is that right?

A Yes.

Q Now, sir, I ask you, do you believe it right or wrong to subtract one company's losses from other companies later acquired?

MR. MARTIN: Objection, your Honor. His state of mind is not in issue.

THE COURT: I would quite agree in the literal sense. However, I feel that that can be rephrased to clarify what you really are asking.

Q Did you know that that had been done, that the pooled companies' losses -- I am sorry -- that the pooled companies had been reduced by National Student Marketing's losses, when you made that remark to Mr. Martin back there in February?

A I didn't recall any of this when I made that remark in February.

Q Now, sir, I want to know if the information that you didn't have when you spoke to Mr. Martin, that information is, is it, was it right or wrong to do that, to take National Student Marketing's losses and subtract it from some other company?

MR. MARTIN: Objection.

MR. VELIE: I believe the defendants have put this into issue, your Honor, by asking the state of mind at that point.

THE COURT: Wait a minute. I know, but that is not the real problem here. I don't follow this question. Do you know what?

Q Is it right or is it wrong to subtract one company's losses from other companies later acquir ed?

THE COURT: I am going to sustain that objection as to form for other reasons than you apparently assume here. That is not a firm question in this context at all, even from your point of view, as I see it.

Q Do you know of any warrant in accounting for subtracting one company's losses from other companies?

A No, I don't.

Q That piece of information that you didn't have when you spoke to Mr. Martin, is that a significant piece of information?

A Yes.

Q It affects your judgment?

A Yes.

MR. MARTIN: Objection.

THE COURT: Sustai ned. It is not important whether it affects his judgment at the moment. You can't mean that.

Q Was that an important piece of information to have in mind --

MR. MARTIN: Objection, your Honor. It is the same question.

Q -- when you discussed with Mr. Martin?

THE COURT: Look, Mr. Velie, you have already -sked that about four different ways. That is enough.

MR. VELIE: Thank you, your Honor.

Q Mr. Martin asked you about the fact that you didn't go to see him after that arraignment. Mr. Martin suggested in his questions that the Government may have had a deal with you that you not go to see Mr. Martin.

MR. STILLMAN: Your Honor, these preambles go right over my head.

THE COURT: Sustained. Maybe you drew that inference, but that is not the way to put questions, Mr. Velie. Start over again.

Q Did any Government officer ever tell you not to go to see Mr. Martin or Mr. Stillman?

A No, they did not.

Q Do you have your own retained defense attorney?

A Yes, I do.

Q His name is Plato Cacheris?

A Yes, it is.

Q Is he a highly regarded honorable and experienced criminal defense lawyer?

A Yes.

Q Did he give you some advice in this area?

A Yes.

Q Did he tell you not to go to see Mr. Martin?

MR. MARTIN: Objection.

THE COURT: I don't think we have to get into

this. The only question I will allow you have already put, and that is that he was not told by any Government attorney or agent not to go see Messrs. Martin and Stillman, and that is sufficient unto the day.

Anything else?

MR. VELIE: Yes, your Honor.

THE COURT: Let's get to it.

Q Mr. Kurek, counsel for both defendants have asked you about your plea to one count in the indictment. You mentioned a letter. So there is no mystery about it, 3502CC can you identify that letter?

A Yes, I can.

Q Is that the letter you mentioned to Mr. Martin? I am sorry. Perhaps it was Mr.Stillman.

MR. STILLMAN: It was me.

Q It was Mr.Stillman .

A Yes, it is.

MR. VELIE: I offer it.

MR. MARTIN: Objection.

THE COURT: Can we give this a number?

MR. VELIE: 3502CC, your Honor, if that will do. Otherwise I will renumber it.

THE COURT: No, that is all right. 3502CC?

MR. VELIE: Yes, your Honor.

THE COURT: All right.

MR. VELIE: I believe there is a pending objection.

MR. MARTIN: There is an objection, your Honor.

THE COURT: As soon as I can see the document I will rule on it.

That is actually your signature down on the last page under "acknowledged by," correct?

THE WITNESS: That is correct.

THE COURT: Under Mr. Plato Cacheris' signature.

The several objections are overruled and this will be received.

MR. VELIE: Thank you, your Honor.

(Government Exhibit 3502CC was received in evidence.)

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Q You have already responded, Mr. Kurek, that that is your signature on the office copy here.

Is that Mr. Cacheris' signature as well?

A Yes, it is.

Q And the original that you received was signed by me for the Government, is that the idea?

A Yes.

Q This one is a comformed copy indicating a signature by the Government's officer?

A Yes.

MR. VELIE: I am going to read 3502 CC to the jury. It is addressed to Plato Cacheris, Esq, Hundley and Cacheris, P.C., 1709 New York Avenue, Northwest, Washington, D. C. 20006, Re: United States vs. Randall et al., 74 Cr 43.

Incidentally, this is the Government's letter, the Government's office copy, from the Government to Mr. Cacheris.

(Mr. Velie read from Government's Exhibit 3502CC in evidence.)

Q Mr. Kurek, is that your arrangement with the Government in total?

A Yes.

Q Doyou have any other arrangement with the Govern-

ment?

A No, there is not.

Q Mr. Kurek, I show you Natelli Exhibit J now in evidence, at the portion where it says "Eastern Airlines Youth Marketing Plan," the page right before 2267.

You notice a date on there?

A Yes.

Q Is that May 9, 1969?

A Yes, it is.

Q Between May 9, the date of this proposal, and August 15, 1969, at the printers plant, did anyone as far as you know, ever say that Eastern Airlines wanted to do any of the things in that proposal?

A Not that I can recall.

Q Exhibit 46C is the annual report for 1969.

I am showing you another copy.

Do you recall being read something from this annual report to the effect that on the books at the time of this annual report there was something like $1,800,000 of unbilled accounts receivable?

A Yes.

Q That entry reflects, does it not, the fact that $1 million in the Pontiac commitment had already been written out, is that correct, written off and deleted?

A That's correct.

Q That entry also reflects the fact that the $1-millior of 1968 sales had been taken out and deleted, is that correct?

A That's correct.

Q Incidentally, that annual report reflects a write down of unbilled accounts receivables, is that correct, in that sense, that the number is smaller?

MR. STILLMAN: Smaller than what? I object to the form of the question.

Q Do you understand my question?

A No, I don't understand your question.

Q I direct your attention to the portion of your testimony in which you indicated that you thought Mr. Natelli had said that unbilled accounts receivables could be as much as $4 million by year end. Doyou remember that?

A Yes.

Q In fact, at year end, which was after the proxy statement, is that correct --

A Yes.

Q --after the year end, at year end and after the proxy statement, certain contracts were written out, is that correct?

A Yes.

Q Prior to the proxy statement the Pontiac contract was written out?

A That's correct.

Q Prior to the proxy statement $1-million of 1968 sales were written out, is that correct?

A That's correct.

Q So that the $4-million figure was reduced somewhat by those deletions, is that correct?

A Yes.

Q I show you Natelli Exhibit H now in evidence.

Do you recall this as a memorandum of August 7, 1969, concerning a conversation with Mr. Natelli about the Pontiac contract?

A Yes.

Q Now, sir, you wrote in this memo, did you not, "Tony Natelli indicated since we don't have a contract and haven't collected any money on the contract he had reservations about including it in the proxy since it was so near to August 31."

Now, sir, the fact that there was no contract, was that a part of the reason that troubled Mr. Natelli?

A It appears to have troubled him from the memo that was written.

MR. MARTIN: Objection, your Honor. Is the

witness telling us his recollection or is he interpreting a document that the jury can interpret?

THE COURT: Yes, I agree. In other words, Mr. Kurek, apart from the document, I believe the question has to do with your recollection.

However, Mr. Velie, help the witness out. What do you really mean to ask him here?

Q Did Mr. Natelli have in mind when he made the statements to you two pieces of information --

MR. MARTIN: Objection, your Honor.

THE COURT: Yes, sustained. We can't ask him to tell what was on Mr. Natelli's mind.

Q Did Mr. Natelli impart to you two pieces of information, one that there was no contract --

MR. MARTIN: Object to the leading.

Q --and two, that no money had been collected?

MR. MARTIN: Object to the leading.

THE COURT: What did Mr. Natelli tell you, do you recall?

THE WITNESS: My best recollection of what he told me is in the memo. It was done on or about the time of the conversation, the date of the conversation, and that's what I remember about it.

Q It sayshere—

MR. MARTIN: Your Honor --

MR. VELIE: Are you objecting to my reading what is in evidence? You put it in evidence.

MR. MARTIN: It has already been fully read is the objection.

THE COURT: But that doesn't mean he can't ask a question. Let's give him a chance.

What is your question, sir?

MR. VELIE: I was going to read again and ask if this is the portion he refers to when he says it refreshes his recollection.

Q "Tony Natelli indicated that since we don't have a contract and haven't collected any money on the contract he had reservations about including it in the proxy since it was so near to August 31."

Does that, as best you can give it to us now, reflect what Mr. Natelli said to you?

A Yes, it does.

Q As far as you know, had anybody done any work for the Pontiac Division of General Motors between February, when the contract was booked, and August, when it was taken out?

A Not to my knowledge.

Q I show you Natelli's Exhibit D in evidence.

Do you recall that as a memorandum on August 26, 1968 concerning contracts asked about by Mr. Martin in his cross examination?

A Yes, I do.

Q Do you recall Mr. Martin asking you whether these were not, in fact, contracts being gathered up for the year end report August 31, 1968?

A I believe he had asked to that effect.

Q Do you recall what you response was?

A Yes.

Q What did you tell him?

A I told him thatI thought that this was information that Bill Chapman was trying to collect just to gather together any contract information, whether it had to do with August 31 or May or any timeprior to that. We were just trying to establish contract files. That was what I understood from that memo.

Q I show you Government's Exhibit 2 in evidence and ask you to look at the top folder, the top schedule.

I believe you already identified this as being Mr. Scansaroli's schedule of the unbilled accounts receivable booked at year end 1968.

Do you want to take a moment and see if any of

the contracts thatMr. Martin was asking you about got booked by Mr. Scansaroli's year end?

A It doesn't appear as though any of these on the October 26 memo were the ones that got booked as of August 31, 1968.

Q Your testimony in this area was that the unbilled accounts receivables began appearing in October, is that correct, 1968?

MR. STILLMAN: Excuse me. I object to the form of that question.

Q What is your testimony?

MR. VELIE: I will rephrase the question.

Q What is your best recollection of when these unbilled accounts receivable booked by Mr. Scansaroli here on the schedule, Exhibit 2, first saw the light of day as far as you know?

MR. STILLMAN: I object to the form of that question.

THE COURT: Overruled.

MR. STILLMAN: All right.

A My best recollection is that that material was started to be gathered in the early part of October of 1968.

Q The contracts on Natelli Exhibit D were not for that period, is that your best recollection of the matter?

A That is.

Q Thank you.

I call your attention to the questions by Mr. Stillman, Mr. Kurek, about expenses chargeable or thought to be chargeable to the oral commitments booked at year end 1968.

Is your testimony that salesmen's draw against commission was identifiable --

MR. STILLMAN: I object to the leading.

Q Is your testimony --

MR. MARTIN: The fact you are asking doesn't mean --

THE COURT: Since I can't even understand what he's trying to do, I can't rule on the objection. We have to get the ball near the plate before the umpire can put up one hand or another.

Put your question as you want it. You want to object, raise your hand.

MR. STILLMAN: Sometimes there's a balk, your Honor, before he even throws the ball.

THE COURT: I agree with you, there are several balks here. Let's go on.

Q Is it your testimony that salesmen's draw against commission is identifiable to any particular contract or unidentifiable to any particular contract?

MR. MARTIN: Objection.

THE COURT: Overruled.

A It was unidentifiable as I remember it.

Q Tell us what is the salesmen's draw against commission?

A A draw against commission is monies advanced to a salesman against commissions he will earn subsequently as a result of sales.

Q You mean it is a kind of a loan?

A In effect.

Q The salesman hasn't earned his commission yet, has he?

A No.

Q With respect to the 1968 commitments, had the salesmen earned their commissions or were they drawing against their commissions?

A As I recall it, they were drawing against commissions.

Q I show you Government's Exhibit 4D, portions of which are in evidence.

I show you 4D 2 which is in evidence.

Can you tell us what this ledger page shows in National Student Marketing's general ledger?

A It shows accrued liabilities on contracts in

progress in the amount of $1,068,000.

Q Are these the 1968 contracts?

A Yes.

Q These are, are they, the costs associated with those contracts put on the books when the contracts were booked, is that the idea?

A That's correct.

Q Would you please tell the jury what an accrued liability is?

A An acrued liability is a debt that will -- that is anticipated will be incurred but has been recognized on the books prior to its being billed, in effect.

Q You say it is anticipated?

You mean they haven't spent a million bucks yet?

A No.

Q They just anticipate that they will?

A Correct.

Q And these are the costs that are being matched against the income in 1968, is that the idea?

A That's right.

Q Thank you.

I put before you Government's Exhibit 3 in evidence, draw your attention to the first several pages.

Do you recognize the handwriting?

MR. STILLMAN: We will concede, your Honor, that Mr. Scansaroli is the author of that document.

Q Do you recognize his handwriting anyhow?

A Yes, I do.

MR. VELIE: I believe Mr. Martin will concede he read a portion of this in his opening, is that correct?

MR. MARTIN: That's correct.

Q I show you Government's Exhibit 5 now in evidence, National Student Marketing's 1968 report.

I call your attention to Mr. Stillman's cross examination about the footnote 3, contracts in progress.

MR. VELIE: I want to read a portion of Exhibit 3 at this time before I place my next question, your Honor.

I'm reading, gentlemen, from page 1912.

(Mr. Velie read from Government's Exhibit 3 in evidence to the jury.)

Q I ask you, Mr. Kurek, that is, in fact, the method chosen by Mr. Scansaroli and Mr. Natelli, is that correct?

A That's correct.

MR. MARTIN: Objection, characterization, your Honor. There was a lot of testimony that was chosen by a lot of people.

THE COURT: That may be. I can't change the

question or the answer on that basis.

MR. VELIE: I'm going to read further.

(Mr. Velie read from Government's Exhibit 3 in evidence to the jury.)

Q You will recall when Mr. Stillman was asking you about footnote 3 he read to you line by line and asked you after each line, isn't that so, Mr. Kurek?

Do yourecall that?

A Yes, I do.

Q Do you recall what he did when he got to the bottom or the end of it and asked you about the letters, the big black letters at the top of that that says contracts in progress? He didn't ask you whether that was true, do you recall that?

MR. MARTIN: Objection.

MR. STILLMAN: If your Honor please --

THE COURT: Sustained.

Q Do you recall that he asked you wasn't that the title?

A Yes, he did ask if that was the title.

Q I ask you, sir, in light of the information in Exhibit 3, which says, "Extra caution should be used because there is no legal binding contract" -- I ask you, sir, does the title which says contracts in progress or that footnote,

does that report anywhere in there the fact that extra caution should be used?

MR. STILLMAN: Objection, your Honor.

THE COURT: Overruled.

MR. STILLMAN: The document is in evidence, your Honor. It speaks for itself.

Both of them are now.

THE COURT: Go ahead.

Q Do you see that in there? Does it show that extra caution should be used?

A No, I don't see that.

Q Does it tell the reader that these are not legal binding contracts?

MR. MARTIN: Objection.

THE COURT: Yes, I will sustain that, whether it tells them that or not, Mr. Velie, you can get from the document.

MR. VELIE: Very well.

Q The document says, doesn't it, contracts in progress in big black letters?

A Yes, it does.

Q Mr. Stillman asked you if you thought Mr. Scansaroli did an honest job after he went to work for you in October of 1969.

I'm going to ask you a question about the proxy statement. The proxy statement was prepared before October, is that correct?

A That's correct.

Q Is it honest or is it dishonest to subtractone company's loss from other companies?

MR. STILLMAN: We have that balk now, your Honor.

THE COURT: Yes, we have had that before in what I regard in far more preferrable form. Let's not repeat.

Q Do you know of any warrant in accounting to subtract one company's loss from other companies later acquired?

A No, I don't.

Q Did Mr. Scansaroli do any such thing when he was under your supervision at National Student Marketing, if you know?

A Not that I know of.

Q Would you have sanctioned him to do any such thing when he was working for you later on?

A No.

Q I draw your attention to that portion of your cross examination having to do with your conversation with Mr. Scansaroli about his CPA certificate.

Do you recall that Mr. Stillman asked you about the remark about locked boxes?

A Yes, I do.

Q He asked you if you took that particular remark about locked boxes seriously. Do you recall that?

A Yes, I do.

Q I want to point you to your direct examination, Page 237.

THE COURT: Let's go ahead.

Q I am going to read you a question and answer and ask you about it.

"Q Tell us the conversation, Mr. Kurek."

This is a question by me.

"A The conversation was after lunch. Mr.Scansaroli was talking or we were all talking about commitments and Mr. Scansaroli indicated that he was concerned about it."

Was that some kind of a joke?

MR. STILLMAN: Is that a question, your Honor?

MR. VELIE: Yes.

MR. MARTIN: Objection,your Honor. It is not reading the entire answer.

MR. VELIE: I am going to ask him about these phrases.

THE COURT: I am not sure, though, that this is the problem here. I don't think anybody is contending that this is a joke.

MR. VELIE: I beg to differ. I believe Mr.

Stillman --

MR. STILLMAN: Absolutely not. That is not what I said at all.

THE COURT: This is the point. I don't think we were confined or he was confining himself to this particular selection of the testimony, and that is why I am going to sustain the objection.

MR. VELIE: Very well.

Q Let me put another question. "The conversation was after lunch. Mr. Scansaroli was talking or we were all talking about commitments and Mr.Scansaroli indicated that he was concerned about it, that he didn't know whether the right decision or the right type of accounting had been made back in August and he was concerned about his CPA certificate. He also said perhaps I ought to put in a locked box in a bank."

Do you recall that being your testimony?

A Yes.

Q Was this a serious matter?

A Yes.

Q The last remark about the locked box, did that relieve the tension a little bit, if you can recall?

A I don't recall that part of it.

MR. VELIE: Your Honor, at this point I renew

my offer of Exhibit ~~24~~ 14.

THE COURT: That is fine except I don't have a copy. Oh, here. Here is the original.

(Pause.)

MR. STILLMAN: My position has not changed. I still object to it on the ground that I urged to your Honor before the commencement of this trial.

MR. MARTIN: Objection, your Honor.

MR. VELIE: May I speak to that?

THE COURT: No, please don't. You don't need to at this point certainly. If ~~you~~ you do, I will alert you.

My only point still is, Mr.Velie, that I don't see the necessity or the technical evidentiary underpinning. He doesn't seem to need to have his recollection refreshed.

MR. VELIE: May I speak to that?

THE COURT: He has testified fully about this.

MR. VELIE: Exactly.

THE COURT: I assume you don't contend this is inconsistent from what he said.

MR. VELIE: Exactly. It is consistent and it is offered as a prior --

MR. MARTIN: Objection, your Honor --

THE COURT: Please, Mr. Martin. I am the one

who is making the points. You can object to what I say. I am going to overrule it. There is no harm to you at all in what I have just said.

MR. MARTIN: I am objecting to Mr. Velie making a statement. If he wants to approach the side bar --

THE COURT: No, please.

MR. VELIE: My offer, your Honor, is as a prior consistent statement. In view of the cross-examination of Mr. Kurek, I believe I am entitled to put this before the jury as a statement he made in June of '69.

THE COURT: I will rule on this a little bit later because there is another problem here which is not raised by you and indeed it is not raised by anyone. I want to discuss it with defense counsel because I am frank to say I really don't understand their position. I think I understand yours now.

I don't understand theirs.

MR. VELIE: I would like to speak to it now if you could.

THE COURT: What I would like to suggest to you is that we finish with this witness. This is without prejudice. You may be right about this. He isn't going to help us any more on this subject. I do wish to discuss something that defense counsel have not raised and I want to

make sure they understand before I rule on this.

MR. VELIE: Thank you, your Honor.

THE COURT: Do you have any other redirect?

MR. VELIE: Yes, your Honor.

THE COURT: All right.

BY MR. VELIE:

Q Do you recall that Mr.Stillman asked you about when you received certain comfort letter information? Do you recall that area of testimony in cross-examination?

A Yes.

Q Let's get the entire sequence here.

I show you Government Exhibit 26 now in evidence. Exhibit 26 is, is it not, the draft of the comfort letter given to you on the evening of October 30 by Mr. Cologna.

A Yes.

Q It discusses in it three large adjustments?

A Yes, it does.

Q One for $5000?

A Right.

Q One for $300,000?

A Yes.

Q One for $84,000?

A Yes.

Q Do you recall that Mr. Stillman asked you about

a conversation before that on October 27?

MR. VELIE: Exhibit K, Mr.Stillman.

MR. STILLMAN: I gave you a copy yesterday.

MR. VELIE: Very well. I will use my copy.

Q I show you Scansaroli Exhibit K.

MR. VELIE: If I am not mistaken, this has been marked for identification but not offered, is that correct, Mr.Stillman?

MR. STILLMAN: Correct.

Q I believe Mr. Stillman asked you what Mr. Natelli said to you and what you said to him on October 27. Let me ask you: On October 27, did Mr. Natelli tell you that there would be a $500,000 downward adjustment?

A Not that I can recall.

Q Did he tell you that there would be a $300,000 downward adjustment?

A Not that I can recall.

Q Did he tell you that there would be a $84,000 adjustment?

A Not that I can recall.

Q That totals up to $884,000, is that correct?

A That is correct.

Q What is your best recollection? Would you have forgotten something like $884,000 on October 27th?

MR. STILLMAN: Objection.

THE COURT: I think this gets a little bit attenuated really. If you have a question here, did he forget it, not would he. I don't follow this at all.

MR. VELIE: Very well.

Q Give us your best recollection. Did Mr. Natelli tell you those things or didn't he?

A On October 27th?

Q On October 27th.

A I don't believe that he did. At least I didn't make any notation of it if he did; that is notations of the phone conversation.

Q You made notations of the phone conversation?

A Yes.

MR. VELIE: I will offer them.

MR. STILLMAN: No objection.

MR. MARTIN: May I see it, please?

MR. VELIE: Sure.

(Pause.)

MR. MARTIN: May I understand what you are offering, sir?

MR. VELIE: I will offer those, the first page.

MR. MARTIN: I have no objection.

MR. VELIE: Call this Exhibit 49, Government

Exhibit 49.

xxx (Government Exhibit 49 was received in evidence.)

MR. VELIE: I am going to try to read this. It is a Xerox.

(Mr. Velie read from Government Exhibit 49 in evidence to the jury.)

Q Is that something you noted about talking to Mr. Natelli about?

A Yes, it is.

Q Notes that topic, is that the idea?

A Yes.

Q The note here, "spoke with Davies at 10:00 A.M."

Did you thereafter speak with Mr. Davies and make a note of it?

A Yes.

Q "Spoke with J.Johnston re: F/F."

Does that mean fixed fee?

A Yes.

Q "Percentage completion." Would you help me, Mr. Kurek. I am unable to follow the balance of that note.

A It says, "Per Tony," after that.

Q Please speak up so all the jurors can hear you.

A It reads "Spoke with J. Johnston regarding F/F percentage completion per Tony."

There is something in there that looks like it is "Johnston, 10:30." Then on the next line it says to "Call A/E," which means account executive, "and get their estimated percentage of completion by Tony."

Q Did either of those reflect conversations about a comfort letter?

A Those two notes don't.

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Q The next note says "Problem with comfort letter to INC-PMM-comfort letter no deterioration in company after 5/31," and there is an arrow and it says "company as then existed."

Then it says "Exclude Frommer, Mar-Clay, Mailbag" - does that say "would," "should"?

A "Would be net."

Q -- "would be net contracts? There has been deterioration, considering XYZ acquired position now."

Did you reflect in here the important information given to you by Mr. Natelli as it came to you over the wire?

MR. STILLMAN: Objection, your Honor. He reported what he reported.

THE COURT: That is right. So I am going to sustain the objection.

Q Did you make an effort to get down the important parts of Mr. Natelli's thoughts as you listened to him?

MR. STILLMAN: Objection, your Honor.

THE COURT: I will allow that.

Q Did you make an attempt --

THE COURT: What was this? Were you trying to put down more or less verbatim or --

THE WITNESS: I was making notes of the telephone conversation.

has the answer.

THE COURT: There is no ironclad written in the stone rule against referring to documents not in evidence, number one.

However, the point is, as Mr. Stillman just did say, it is already asked and answered, Mr. Velie. You don't have to beat it into the ground.

Q Do you make prior period adjustments if they are not material?

A No, sir.

Q So if you do have a prior period adjustment it is material, isn't it?

A Prior period adjustments can be made through current earnings if they are immaterial.

Q You have before you, I believe, Exhibit 17, which is the draft proxy. Mr. Martin, I believe, was asking you were you not responsible for that document in some sense as an officer of National Student Marketing.

Do you have a specific recollection as you sit here now of being told that Mr. Natelli proposed to subtract National Student Marketing losses from pooled companies?

A I don't have a specific recollection, but I am sure that I was aware of it.

Q Tell me, do you know of any warrant in accounting

that permits an accountant to take one company's losses and subtract it from other companies later acquired?

A No, sir, I don't.

MR. VELIE: I have no further questions.

xx RECROSS EXAMINATION

BY MR. MARTIN:

Q In August of 1969, when you were working on the proxy, did you suggest to anybody that perhaps APB 9 could be construed to require disclosure in this case?

A No, sir.

Q Is it a fact that didn't occur to you, did it?

A No, sir.

Q What was the net effect on earnings of the tax writeoff and the contract write off, sir?

A There was no effect on earnings.

Q And the other item written off to retained earnings, the Listerine contract, was about $21,000, isn't that correct?

A Yes, sir, that's correct.

Q Would the amount of $21,000 in earnings as compared to $388,000 originally reported be material in your mind?

A No, sir.

MR. MARTIN: No further questions, your Honor.

RECROSS EXAMINATION

BY MR. STILLMAN:

Q Mr. Buck, just one question.

A Yes, sir.

Q As the proxy was being turned out and you were doing what you were doing and Mr. Scansaroli was doing what he was doing and Mr. Natelli was doing what he was doing, did either of them say anything or do anything to lead you to believe that they were attempting to conceal anything from anybody?

A No, sir.

MR. STILLMAN: Thank you.

MR. VELIE: Just one brief question.

REDIRECT EXAMINATION

BY MR. VELIE:

Q The write off in Journal Voucher 283 substitutes a tax loss carry forward, does it not, for certain sales? Do I have that right? The adjustment to the deferred tax was for a loss carried forward, or did you know that?

A I am not sure it is for a loss carried forward or contracts reported on a different basis for tax purposes. Contracts were reported on an installment basis for tax purposes and on an accrual basis for statement purposes.

Q What it does then is it trades sales for some kind of a tax credit, is that the idea, it comes out about where

it was?

A I am not sure that I understand your question. The entry-- I am sorry. I don't understand.

Q I will put it a different way. Tax deferral accounting is a very complicated matter, isn't it?

THE COURT: Look, Mr. Velie, this isn't redirect.

MR. VELIE: I believe it is, your Honor.

THE COURT: This you have gone into once before. You are just hitting it again.

MR. VELIE: I believe this is a little bit different, your Honor. If you will bear with me for one question I will wrap it up.

THE COURT: You told us that a long time ago and we keep opening up new subjects. Come one.

Q Is it complicated?

THE COURT: Is what complicated?

Q Tax deferral accounting, adjusments to deferred taxes and the like.

A For most people, yes.

Q Now, sir, did anybody tell you how it came to be that the tax credit discovered turned out to be to the penny the exact amount of the profits being written off on the Michaels contracts?

MR. STILLMAN: I object.

THE COURT: Yes, I am going to sustain that. That could have been gone into on direct. All this is an afterthought which you can argue to the jury on the basis of evidence already in the record.

Thank you, Mr. Buck. You may be excused.

MR. MARTIN: Thank you, Mr. Buck.

(Witness excused.)

THE COURT: Ladies and gentlemen, the jury will suspend. Thank you for your patience this evening. We will start as usual tomorrow at 10 o'clock.

Counsel, please remain.

(Jury left the courtroom.)

THE COURT: Gentlemen, I am prepared to rule on this issue which is raised in your corresponding briefs which you filed earlier this afternoon, subject, however, to hearing from you, Mr. Velie.

Who is this witness?

MR. VELIE: Your Honor, the Government will call, among others, Mr Ritzenthaler.

THE COURT: I don't need the name. What kind of a person?

MR. VELIE: This is a man who traded in his company for National Student Marketing stock and would testify that he didn't know various items which are not disclosed in

proxy statement and that had he known them he would not have been interested in the deal.

THE COURT: All right. Ritzenthaler is, of course, connected with the company of his name. You mean to say there are others?

MR. VELIE: Your Honor, I believe that there will be witnesses from Interstate National who will say -- also a company gobbled up -- that they would not have permitted that deal to go through had they known the true state of affairs. It is that type of testimony in at least those two instances, and I haven't decided about others.

THE COURT: First of all, I cannot recall in all the stock fraud cases I have listened to that anybody ever did this before, and as a matter of fact, in the case immediately preceeding this one, in this very room, it was not done, and this Court charged without objection that the Government wasn't obligated to prove this kind of thing, and the violations in that case were geared to the same statute or statutory sections which underpin count 2 in this case.

Second of all, as the defendants point out, you can always get somebody, if you are lucky, to come in and say that had he known thus and so he wouldn't have done thus and such.

MR. VELIE: That is what I am offering.

THE COURT: It is immaterial. You don't have to prove that. Itis not essential for the Government to bring in witnesses like that to prove their case. You know that's so.

MR. VELIE: The Government is required to prove materiality.

THE COURT: The Government can prove materiality but they don't prove it that way.

MR. VELIE: Allow me to point out what I believe to be the primary distinction, wholly apart from the fact that the Government may or may not have cited you the authority in our brief.

THE COURT: I might say a Motor Vehicle accident case does not strike me as very good authority and that is the only Second Circuit case you brought to my attention.

MR. VELIE: That is the only Second Circuit case, but there is one from the Illinois Circuit, the Federal Circuit in Illinois.

THE COURT: I can see right offhand they are likely distinguishable. But forgetting what those cases say for the moment, I point out to you (a) the Government does not have to prove its case by bringing in somebody to say "Had I known the true facts, which are not disclosed, I wouldn't have done thus and such."

You know thatyou don't have to bring in evidence of that kind.

MR. VELIE: The distinction between this case and the preceding one is this is a case essentially of nondisclosures in which people --

THECOURT: The last case was nondisclosure of facts such as the defendants were statutory underwriters and that they were taking down 30 per cent of the after market, et cetera, pure nondisclosure in the offering circular. I agree with you the facts are materially different, but the point remains the same.

I can assure you that in no stock fraud case -- and believe me in my tenure around here, I have sat and charged juries in a great many stock fraud cases -- in no instance have we ever permitted this kind of thing under this statutory problem.

MR. VELIE: Your Honor, would you be willing to rule in addition to theway I gather you are planning to rule on the Government's offer of proof that the defendants are not permitted to argue that nobody ~~related~~ relied on.

THE COURT: If the defendants are rash enough in the face of the memo that they submitted to this court to make such an argument, I will stop them and categorically instruct the jury that what they said is pure unmitigated balderdash.

MR. MARTIN: I will allow you to slap my hands too.

THE COURT: Be that as it may, I am not interested in slapping your hands, but I would certainly instruct the jury. But we will never get to that point. They would have to be insane if they ever made such an argument. They brief this, as you did.

MR. VELIE: Very well. In that case, your Honor --

THE COURT: If anything else happens to raise specters to the contrary, I will instruct the jury that the Government has no such burden to bring any such people in.

MR. VELIE: I would appreciate that in view of my understanding of the openings, at least Mr. Stillman's, that nobody here got cheated, or if they did, they were millionaires anyhow, and there has been some examination along those lines.

THE COURT: Wait a minute. I am talking about something more serious than that. I am talking about any evidence which might suggest otherwise that comes in for any reason, I am talking about closing argument.

The point is, Mr. Velie, with all due respect, I don't think your cases are in point. Second of all, I am convinced to a moral certainty that the law is that you do not have to prove this, and you seem to agree with me by the way you react.

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MR. VELIE: I believe that you have accurately stated the Government does not have to prove reliance.

THE COURT: There is a problem for the defendants. It is very easy for the Government in this context to get somebody to come in, particularly when the stock went down, and some of these sellers who sold these companies to NSMC are hopping mad. Their stock turned out to be worthless, or relatively so, and they didn't do so well. Therefore it puts the defendants at a terrible disadvantage.

There is a second problem. You have got to prove that the defendants perpetrated a fraud. You promised this jury that that is what you would do. I don't blame you. But I don't think that is helped by having somebody come in here and testify to an ultimate question which the jury itself will decide.

In other words, the witness will in effect be deciding for the jury, in a sense, one of the most important questions in the case, and I don't think that is normally done in our court.

We don't let somebody come in and say "Look, jury, if I had to decide your question, I would decide it such and such a way."

Obviously they won't put it that way and you wouldn't ask them to. But you see the point I am trying to

make.

MR. VELIE: I do.

THE COURT: I think the defendants have the better of the argument and I won't permit such testimony from any witness, whether he is an ordinary stockholder or a stock holder by virtue of the sale of his company to NSMC.

MR. VELIE: Your Honor, in that case I will not offer any "What would you have done" testimony.

THE COURT: All right.

(Adjourned to 10 a.m., October 30, 1974.)

United States of America

vs. 74 Cr. 43

Anthony M. Natelli and

Joseph Scansaroli

New York, New York.
October 30, 1974 - 10:00 A.M.

(Trial resumed.)

(In the robing room.)

THE COURT: You may remember that one of the fact finders, Juror No. 9, Elizabeth Gedra, yesterday kept telling the two clerks that she was incompetent to be a juror in the sense she couldn't understand what was going on and that she didn't know why she was selected in this case because she doesn't understand what is going on.

This is the substance.

I can't begin to tell you verbatim, neither could Mr. Bones or anybody else. She has been telling these things as she walks through the corridors.

However, I did feel that it was incumbent upon the Court to disclose this information to counsel in this case.

I do feel that this is important to bring to your attention . Off the record.

(Discussion off the record.)

(In open court; jury present.)

THE COURT: Good morning, ladies and gentlemen. We are ready to proceed I think, Mr. Velie.

MR. VELIE: Yes,your Honor.

Yesterday of course the Government read a stipulation concerning certain exhibits. I would now like to make an offer of Government Exhibits 4A, 4B, 4C, 21, 24, 34, 35, 41 and 42.

(Pause.)

MR. MARTIN: There are going to be objections, your Honor, as to -- we have stipulated authenticity.

THE COURT: Right.

MR. MARTIN: There are relevant objections to certain of the documents offered, particularly the last two or three which deal with the period December 31, 1969.

MR. VELIE: You are talking about 41 and 42?

MR. MARTIN: Correct.

MR. VELIE: As I understand it, the objection to relevance is to 41 and 42.

THE COURT: Before I am going to be able to comment or rule, I am going to have to see what we are talking about.

MR. VELIE: Yes, your Honor.

(Pause.)

THE COURT: Is it fair to say, Messrs. Martin and Stillman, that the defense does not object to 4A, B and C, 21, 24, 34 and 35?

MR. MARTIN: Y our Honor, I think the best thing to say on that -- I know there are portions that are relevant in each of these documents. I have some concern about simply wholesale dumping a lot of records that don't deal with anything that is in issue in this case.

We have stipulated their authenticity and to the extent that Mr. Velie wants to use relevant portions, we have no objection.

I think the more appropriate way would be to proceed with witnesses.

THE COURT: I think so, too. I think this should have been discussed before we began so that there is not all this delay.

Unless you tell me a good reason to the contrary, Mr.Velie, I suggest we wait until you can show these lawyers what you intend to offer specifically and what you are not concerned with, and then we can take this up later.

MR. VELIE: I think I can proceed on that basis, your Honor.

THE COURT: Very good.

MR. VELIE: The Government calls Douglas